

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Statutes 1984, Chapter 1747; Statutes 1985,
Chapter 1274; California Code of Regulations,
Tit. 2, §§ 60000-60200 (Emergency Regulations
adopted July 12, 1986), CSM 4282

Directed By Statutes 2004, Chapter 493,
Section 7, (Sen. Bill No. 1895)

Effective September 13, 2004.

Case No.: 04-RL-4282-10

Handicapped & Disabled Students

NOTICE OF POSTING PROPOSED
ADMINISTRATIVE RECORD AND
OPPORTUNITY TO AUGMENT RECORD

HEARING DATE: May 26, 2005

TO: California State Association of Mental Health Directors
California State Association of Counties (SB 90 Service)
Department of Finance
State Controller's Office
Department of Mental Health
Department of Education
Legislative Analyst
Interested Parties

Proposed Administrative Record and Opportunity to Augment Record

Attached is the proposed administrative record for the reconsideration of the *Handicapped and Disabled Students* test claim directed by Senate Bill 1895. The proposed administrative record consists of the documents filed to date, including the original test claim proceedings in CSM 4282, the decision issued by the Sixth District Court of Appeal in *County of Santa Clara v. State of California, et al.* (Case No. H009520), the parameters and guidelines, and the statewide cost estimate.

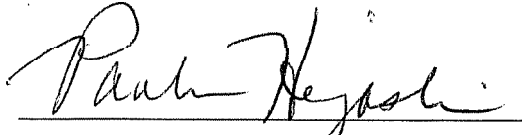
The proposed table of contents posted on the Commission's website on November 30, 2004, has been amended to include additional documents to reflect the June 27, 1996 hearing.

Any interested party, affected state agency, or interested person may request that the administrative record be augmented to include additional documents. Requests to augment the record must be filed by **December 15, 2004**. An original and one copy or an original and a pdf file of the request and/or any additional documents shall be submitted to the Commission. The requests will be posted on the Commission's website.

If the record is augmented, additional documents will be added to the administrative record and uploaded on Commission's website by January 20, 2005.

If you have any questions regarding this matter, please contact Camille Shelton, Senior Commission Counsel, at (916) 323-8215.

Dated: 12/2/04



PAULA HIGASHI, Executive Director

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

<p>RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON:</p> <p>Statutes 1984, Chapter 1747; Statutes 1985, Chapter 1274; California Code of Regulations, Tit, 2, §§ 60000-60200 (Emergency Regulations adopted July 12, 1986), CSM 4282</p> <p>Directed By Statutes 2004, Chapter 493, Section 7, (Sen. Bill No. 1895)</p>
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Case No.: 04-RL-4282-10

Handicapped & Disabled Students

**PROPOSED ADMINISTRATIVE
RECORD**

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for CSM 4282.

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Dated:

Paula Higashi, Executive Director

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Senate Bill No. 1895

CHAPTER 493

An act to add Sections 56139 and 56331 to the Education Code, to amend Section 7576 of, and to add Sections 7576.2 and 7576.3 to, the Government Code, and to add Section 5701.6 to the Welfare and Institutions Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 2004. Filed
with Secretary of State September 13, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1895, Burton. Special education: mental health services.

(1) Existing law requires school districts, county offices of education, and special education local plan areas to comply with state laws that conform to the federal Individuals with Disabilities Education Act, in order that the state may qualify for federal funds available for the education of individuals with exceptional needs. Existing law requires school districts, county offices of education, and special education local plan areas to identify, locate, and assess individuals with exceptional needs and to provide those pupils with a free appropriate public education in the least restrictive environment, with special education and related services as reflected in an individualized education program.

This bill would authorize a local educational agency to refer a pupil suspected of needing mental health services to a community mental health service in accordance with specified provisions. The bill would prescribe certain requirements relating to making those referrals and providing related services.

(2) Existing law requires the Superintendent of Public Instruction to administer the special education provisions of the Education Code and to be responsible for assuring provision of, and supervising, education and related services to individuals with exceptional needs as required pursuant to the federal Individuals with Disabilities Education Act.

This bill would provide that the superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs and to ensure that funds provided for this purpose are appropriately utilized. The bill would require the superintendent to submit a report to the Legislature by April 1, 2005, that includes specified information and recommendations relating to the provision and monitoring of mental health services, as provided. The bill would

require the superintendent to collaborate with the Director of the State Department of Mental Health in preparing the report and to convene at least one meeting of appropriate stakeholders and organizations to obtain input.

(3) Existing law makes the State Department of Mental Health or any community mental health service designated by the department responsible for the provision of mental health services when required in a child's individualized education program. Existing law authorizes an individualized education program team or local educational agency to make a referral for mental health services for a pupil to a community mental health service when certain criteria are met and to provide certain documentation when making that referral.

This bill would revise certain provisions of the criteria and of the documentation requirements. The bill would provide that a county mental health agency does not have fiscal or legal responsibility for any costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

This bill would provide that the Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils and to ensure that funds provided for this purpose are appropriately utilized. The bill would require the director to submit a report to the Legislature by April 1, 2005, that includes specified information and recommendations relating to the provision and monitoring of mental health services, as provided. The bill would require the director to collaborate with the Superintendent of Public Instruction in preparing the report and to convene at least one meeting of appropriate stakeholders and organizations to obtain input.

This bill would declare the intent of the Legislature that the director collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices, as provided, for delivering mental health services to disabled pupils.

(4) Existing law provides that counties are to continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services for handicapped and disabled pupils and that counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund for reimbursement claims for services delivered in the 2001-02 fiscal year and thereafter to handicapped and disabled pupils.

This bill would authorize counties to utilize money received from the Local Revenue Fund to fund the costs of any part of those mental health

services and would provide that counties who use money from that fund for those services are eligible for reimbursement from the state, as provided. The bill would provide that these provisions are declaratory of existing law.

(5) Existing law requires, if the Commission on State Mandates determines that an act contains costs mandated by the state, that reimbursement to local agencies and school districts for those costs be made, as specified.

This bill would require the Commission on State Mandates to, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with certain mental health services provided to disabled pupils, and its parameters and guidelines for calculating the state reimbursements for these costs,

(6) The Budget Act of 2004 requires that \$31,000,000 of certain funds appropriated to the State Department of Education for special education programs for exceptional children to be used to provide mental health services required by an individual education plan pursuant to the federal Individuals with Disabilities Education Act and pursuant to legislation enacted in the 2003-04 Regular Session that clarifies the manner in which the services are to be provided.

This bill would provide that those funds shall be allocated to special education local plan areas on a per average daily attendance basis to implement the provisions authorizing local educational agencies to refer pupils suspected of needing mental health services to community mental health service agencies.

(7) The Budget Act of 2004 requires that, pursuant to legislation enacted in the 2003-04 Regular Session, \$69,000,000 of certain funds appropriated to the State Department of Education for special education programs for exceptional children to be used exclusively to support mental health services provided during the 2004-05 fiscal year by county mental health agencies, as provided.

This bill would require those funds to be used exclusively to support mental health services that were both included within an individualized education program and that were provided during the fiscal year by county mental health agencies pursuant to specified provisions. The bill would provide that this funding not be provided for services that are not required pursuant to the federal Individuals with Disabilities Education Act and will offset any mandate reimbursement claims for the fiscal year that may be filed by a county pursuant to specified provisions. The bill would require the \$69,000,000 to be distributed consistent with an allocation plan formulated by the State Department of Mental Health. The bill would require the State Department of Mental Health to submit an allocation plan to the Department of Finance for approval, as

provided, and to the Joint Legislative Budget Committee. The bill would specify the manner of allocation to county offices of education for allocation to county mental health agencies.

(8) This bill would declare that it is to **take** effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 56139 is added to the Education Code, to read:

56139. (a) The superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that **funds** provided for this purpose are appropriately utilized.

(b) The superintendent shall submit a report to the Legislature by April 1, 2005, that includes **all** of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring **processes** used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the **manner** in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The superintendent shall collaborate with the Director of the State Department of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

SEC. 2. Section 56331 is added to the Education Code, to read:

56331. (a) A pupil who is suspected of needing **mental** health services may be referred to a community mental health service in accordance with Section 7576 of the Government Code.

(b) Prior to referring a pupil to a county mental health agency for services, the local educational agency shall follow the procedures set forth in Section 56320 and conduct an assessment in accordance with Sections 300.530 to 300.536, inclusive, of Title 34 of the Code of Federal Regulations. If an individual with exceptional needs is identified as potentially requiring mental health services, the local educational agency shall request the participation of the county mental health agency in the individualized education program. A local educational agency shall provide any specially-designed instruction required by an individualized education program, including related services such as counseling services, parent counseling and training, psychological services, or social work services in schools as defined in Section 300.24 of Title 34 of the Code of Federal Regulations. If the individualized education program of an individual with exceptional needs includes a functional behavioral assessment and behavior intervention plan, in accordance with Section 300.520 of Title 34 of the Code of Federal Regulations, the local educational agency shall provide documentation upon referral to a county mental health agency. Local educational agencies shall provide related services, by qualified personnel, as defined by Section 300.23 of Title 34 of the Code of Federal Regulations, unless the individualized education program team designates a more appropriate agency for the provision of services. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as **useful** as possible to the community mental health service in determining the need for mental health services and the level of services needed.

SEC. 3. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, are responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that

the local educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the educational and mental health treatment needs of the pupil in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, "parent" is as defined in Section 56028 of the Education Code.

(b) A local educational agency, individualized education program team, or parent may initiate a referral for assessment of the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that are all of the following:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services,

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that **cannot** be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local educational agency, pursuant to Section 56331 of the Education Code, has provided appropriate counseling and guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code, or behavioral intervention as specified in Section 56520 of the Education Code, as specified in the individualized education program and the individualized education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of these services were considered and why they were determined to be inadequate or inappropriate.

(c) If referring a pupil to a community mental health service in accordance with subdivision (b), the local educational agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the individualized education program of the pupil, including the initiation, duration, and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local educational agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service if a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all

documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(e) If referring a pupil to a community mental health service in accordance with subdivision (d), the local educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.24 and 300.26 of Title 34 of the Code of Federal Regulations.

(5) An explanation as to the reasons that counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision does not change the identification and referral responsibilities imposed on local educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging

for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

(h) A county mental health agency does not have fiscal or legal responsibility for any costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

SEC. 4. Section 7576.2 is added to the Government Code, to read:

7576.2. (a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter,

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

SEC. 5. Section 7576.3 is added to the Government Code, to read:

7576.3. It is the intent of the Legislature that the Director of the State Department of Mental Health collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices for delivering mental health services to disabled pupils. The best practices may include, but are not limited to:

(a) Interagency agreements in urban, suburban, and rural areas that result in clear identification of responsibilities between local educational agencies and county mental health agencies and result in efficient and effective delivery of services to pupils.

(b) Procedures for developing and amending individualized education programs that include mental health services that provide flexibility to educational and mental health agencies and protect the interests of children in obtaining needed mental health needs.

(c) Procedures for creating ongoing communication between the classroom teacher of the pupil and the mental health professional who is directing the mental health program for the pupil.

SEC. 6. Section 5701.6 is added to the Welfare and Institutions Code, to read:

5701.6. (a) Counties may utilize money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) This section is declaratory of existing law.

SEC. 7. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

SEC. 8. The funds identified in Provision 20 of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be allocated to special education local plan areas pursuant to Section 56836.02 of the Education Code on a per average daily attendance basis to implement Section 2 of this act.

SEC. 9. (a) The funds identified in Provision 10 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be used exclusively to support mental health services that were both included within an individualized education program pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and that were provided during the fiscal year by county

mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Funding from this item shall not be provided for services that are not required pursuant to the federal Individuals with Disabilities Education Act, Funding provided from this item shall offset any mandate reimbursement claims for the fiscal year that may be filed by a county pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. The sixty-nine million dollars (\$69,000,000) identified in Provision 10 of that item shall be distributed consistent with an allocation plan formulated by the State Department of Mental Health, in consultation with representatives of county mental health agencies. The allocation plan shall be based on the most accurate available data, including, but not limited to, county cost reports for this program, and include a minimum-based methodology to address small county concerns.

(b) The State Department of Mental Health shall submit an allocation plan to the Department of Finance and the Joint Legislative Budget Committee. The Department of Finance shall review the plan and either approve or disapprove the plan within 21 days of submission. If the Department of Finance fails to approve or disapprove the plan within the 21 days, the plan shall be deemed to be approved. If the Department of Finance disapproves the plan it shall submit a letter to the Joint Legislative Budget Committee that explains the rationale for disapproval and convene a working group consisting of representatives of the Department of Finance and the State Department of Mental Health and staff of the appropriate policy and fiscal committees of the Legislature. The working group shall jointly develop a revised expenditure plan and submit that plan to the Director of Finance for approval.

(c) Funding identified in Provision 10 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be allocated to county offices of education for allocation to county mental health agencies pursuant to subdivisions (a) and (b). County offices of education shall allocate funds to county offices of mental health no later than five business days after receipt from the State Department of Education. Following the end of the fiscal year, county mental health agencies shall provide documentation of actual services and costs to county offices of education in a form that permits the county offices of education to certify that all costs actually incurred are allowable under the federal Individuals with Disabilities Education Act and were provided during the fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Based on this

documentation, any county mental health agency allocation that exceeds actual documented costs for allowable services shall be reallocated on a pro rata basis to other counties where actual costs exceed the allocation provided in subdivisions (a) and (b). Not less than 25 percent of the allocation of each county shall be distributed to county offices of education no later than 30 days after approval of the allocation methodology by the Department of Finance. Of the remaining amount, 35 percent shall be distributed in January and 30 percent in March to county offices of education, with the final 10 percent, as adjusted for actual costs, distributed upon final cost settlement for 2004-05 fiscal year claims. Any amounts reallocated from counties not expending their allocations shall be provided to the other counties no later than January 2006. No county shall be entitled to receive, after claims are cost settled, more funding than was actually expended for this program.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2004 at the earliest possible time, it is necessary that this act take effect immediately.

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
CSM 1 (5/85)

TEST CLAIM FORM

(Submit FOUR COPIES of ALL ATTACHMENTS)

RECEIVED

AUG 17 1987

COMMISSION ON
STATE MANDATES

FOR OFFICE USE ONLY

DATE FILED

8-17-87

CLAIM NO.

CSM-4282

ENTITY SUBMITTING CLAIM

COUNTY OF SANTA CLARA

CONTACT ~~FOR QUESTIONS ON CLAIM~~

SUSAN A. CHAPMAN

TELEPHONE NO.

(408) 299-2111

SEND FORM AND ATTACHMENTS TO:

COMMISSION ON STATE MANDATES
1025 P STREET, ROOM 177
SACRAMENTO, CA 95814
(916) 323-3562

ADDRESS

OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110

REPRESENTATIVE ORGANIZATION TO BE NOTIFIED

CSAC

I. STATUTE (OR) EXECUTIVE ORDER ALLEGED TO CONTAIN MANDATE

Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985
Title 2 California Administrative Code Division 9

II. THE FOLLOWING MUST BE PROVIDED WITH THE CLAIM

- A. A Copy of the chaptered bill or executive order which contains the alleged mandate, specifically identifying the Statutes and sections alleged to contain a mandate.
- B. Identify state constitutional provisions, federal statutes or executive orders and/or court decisions that impact the alleged mandate.
- C. Attach narrative which describes in detail the alleged mandated activities. Include a description of what was required Prior to the enactment of the alleged mandate, what the alleged mandate requires and how any increased level of service or new program was incurred.

If the narrative describing an alleged mandate involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by testimonial or documentary evidence which shall be submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized or competent to do so and the basis for authorization or competence must be stated in the declarations.

- D. Attach a statement of actual and/or estimated costs which result from the alleged mandate, identified by function and fiscal year.

IMPORTANT NOTE: Test claims will be returned to the claimant if any of the preceding elements or attached documents are illegible, missing or incomplete.

III. CERTIFICATION

I certify under penalty of perjury that the foregoing and the attachments are true and correct of my own knowledge.

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

DIANNE MCKENNA, CHAIRPERSON, BOARD OF SUPERVISORS

TELEPHONE NO.

(408) 299-2328

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

AUG 4 1987

COUNTY OF SANTA CLARA

Test Claim

Chapter 1747, Statutes of 1984,
Chapter 1274, Statutes of 1985,

and

Title 2 California Administrative Code Division 9

Mental Health Services to Handicapped and Disabled Students

This is a test claim of the County of Santa Clara for reimbursement of the costs of the services mandated by Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; and Title 2 California Administrative Code Division 9, relating to the provision of mental health services for handicapped children, for Fiscal Year 1986-87 in the amount of \$3,081,000, submitted in accordance with the provisions of Revenue and Taxation Code Section 2231 and Government Code Division 4 Part 7.

I. Background

Federal law requires states which receive grants-in-aid under the Education for All Handicapped Children Act to have in effect a plan to provide all handicapped children a free, appropriate, public education, including the provision of related services necessary for children to take advantage of their education.

Section 2 of Chapter 1218, Statutes of 1980 added Chapter 24 to the Government Code (renumbered by Chapter 714, Statutes of 1981 as Chapter 25). This established the Legislature's intent to assure receipt of federal funding, including the funds available for services to handicapped children. The responsibility for supervising education and related services for handicapped children specifically required pursuant to the federal requirements was delegated to the Superintendent of Public Instruction. Title 5 California Administrative Code Division 3, commencing with Section 3000, established the responsibilities of the local educational agencies with respect to the assessment of, and provision of special education and related services to, handicapped children.

Prior to the passage of Chapter 1747, Statutes of 1984, local educational agencies were responsible for the assessment and provision of mental health services for handicapped children who needed mental health services in order to take advantage of their individualized education programs (IEPs). The County did not provide individualized education program assessments, or case management for children placed out-of-home pursuant to individualized education programs. With the passage of Chapters 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, and the implementation of Title 2 California Administrative Code

Division 9, the Mental Health Bureau of the County of Santa Clara must provide mental health assessment, case management, and treatment for these children who are residents of the County.

II. Nature of the Mandate

Chapter 1747, Statutes of 1984 added Chapter 26 to Division 7 of Title 1 of the Government Code, and amended Section 11401 of the Welfare and Institutions Code. The legislation provided that psychotherapy and other mental health assessments for children with suspected handicaps shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health. Government Code Sections 7572(c) and 7576. The legislation provided that a representative of the county mental health department shall be included on a child's individualized education program team if the child is classified as seriously emotionally disturbed and the individualized education program recommendation includes out-of-home placement. Government Code Section 7572.5. The State Department of Mental Health or designated community mental health service shall be responsible for the provision of psychotherapy or other mental health services, if the services are necessary in a disabled child's individualized education program. Government Code Section 7576. Parents shall not be liable for the cost of therapy. Government Code Section 7582.

Chapter 1274, Statutes of 1985 amended Chapter 26 of Division 7 of Title 1 of the Government Code, and amended Sections 5651, 10950, and 11401 and added Chapter 6 to Part 6 of Division 9 of the Welfare and Institutions Code. This legislation designated the county mental health agency as case manager for seriously emotionally disturbed children for whom out-of-home placement has been recommended. Government Code Section 7572.5(c)(1). The county mental health agency may delegate this responsibility to the county welfare department, but the county mental health agency remains financially responsible. Government Code Section 7572.5(c). The person who conducts an assessment must attend the individualized education program team meeting if requested. Government Code Section 7572(d)(1). Parents shall not be liable for the costs of mental health assessments or 24-hour out-of-home care for seriously emotionally disturbed children. Government Code Section 7582; Welfare & Institutions Code Section 18350.

New Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610) of California Administrative Code Title 2 was filed December 31, 1985 effective January 1, 1986, and refiled June 30, 1986. These regulations make clear that the local mental health agency shall be responsible for the mental health assessments, and

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 3

shall be financially responsible for provision of mental health services included in an individualized education program, regardless of whether the services are delivered directly by the agency or by contract. Title 2 California Administrative Code Section 60020. The local mental health program shall be responsible for reviewing the educational information, observing the student in the school environment if necessary, determining if mental health assessments are needed and, if assessment is needed, preparing a written assessment. Title 2 California Administrative Code Section 60040.

Subsequent legislation (Chapter 186, Section 2.00, Statutes of 1986; Chapter 1133, Section 3, Statutes of 1986) for Fiscal Year 1986-87 allocated \$2,000,000 to the State Department of Mental Health for assessments, treatment, and case management services, and made available for transfer from the State Department of Education to the State Department of Mental Health an additional \$2,700,000 for assessments and mental health treatment services. Of these amounts, \$222,955 has been allocated to the County of Santa Clara.

As a result of this legislation, the County reviews educational information, determines whether assessments are necessary, assesses the mental health needs of referred individualized education program children with suspected handicaps, prepares written assessments, attends individualized education program team meetings as a team member if the child is seriously emotionally disturbed and residential placement is recommended by any team member, has the person who performed the assessment present at team meetings if requested, conducts mental health treatment for children for whom such treatment is recommended in individualized education programs, contracts with and provides the financing for mental health treatment by private contractors, and acts as case manager for seriously emotionally disturbed students in out-of-home placements.

The County's cost of providing mental health assessments, case management, and treatment for Fiscal Year 1986-87 are set forth in the following schedule.

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 4

Assessment and Case Management

Salaries	\$ 127,000	
Services & Supplies	16,000	
Overhead	<u>21,000</u>	
Subtotal		\$ 164,000

Treatment

Treatment prescribed in IEPs
for children assessed prior
to October 30, 1986: .

Day Treatment (\$93 x 37,237 units) 202 children	\$3,463,000	
Medication Monitoring (\$66 x 86 units) 8 children	5,000	
Individual Therapy (\$87 x 3069 units) 72,children	267,000	
Group Therapy (\$55 x 1364 units) 29 children	75,000	

Estimated cost for treatment
for children assessed after
October 30, 1986:

Estimated Additional (\$1,000 mo. x 6 mos.) 25 children	<u>150,000</u>	
Subtotal	\$3,960,000	
Medi-Cal & Insurance	<u>(820,000)</u>	

Net Treatment Cost	<u>\$3,140,000</u>
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Total Program Cost	3,304,000
Less Appropriation	<u>(222,955)</u>

Estimated Net Cost	<u>\$3,081,000</u>
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County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 5

The estimated total net treatment cost of \$3,140,000 for Fiscal Year 1986-87 includes the cost of individualized education program-mandated treatment for children previously known to the County mental health system, as well as the cost of treatment for children new to the County Mental Health system, allocated as follows:

Estimated cost of treatment for children known to the County mental health system prior to FY 1986-87 (215 children)	\$2,950,000
Less : Medi-Cal & Insurance	<u>(611,000)</u>
Estimated net treatment cost (old cases)	\$2,339,000
 Estimated cost of treatment for children new to the county mental health system in FY 1986-87 (121 children)	 \$1,010,000
Less: Medi-Cal & Insurance	<u>(209,000)</u>
Estimated net treatment cost (new cases)	<u>801,000</u>
 Estimated total net treatment cost	 <u>\$3,140,000</u>

Children known to the County mental health system prior to Fiscal Year 1986-87 had received some mental health services in prior years from either the County or County contract providers. These services did not necessarily satisfy the recommendations of the individualized education programs of those children, as the County was not required to provide the service specified in individualized education programs. Children who had individualized education programs which recommended mental health services were treated no differently from other children receiving mental health services. The County made clinical decisions regarding who to treat, and what treatment to provide. Children were not necessarily seen as often as required by their individualized education programs. The focus of therapy was on the global mental health needs of the children, not the needs as they relate to the ability to benefit from a free, appropriate, public education.

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 6

The effect of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 California Administrative Code Division 9 is to give the highest priority to individualized education program treatment. If mental health resources are insufficient to meet the needs of the community immediately, treatment required by individualized education programs must continue to be provided. Patients with more acute illnesses, but without individualized education programs--including children--may be placed on waiting lists. The County previously had the flexibility of prioritizing treatment or reducing the level of mental health services below the level required by individualized education programs. The County has lost this flexibility, as the legislation mandates that the County provide mental health services pursuant to individualized education programs, regardless of the severity of the mental condition, and regardless of funding limitations.

The legislation impacts the County's treatment of children pursuant to individualized education programs in another way as well. Prior to Fiscal Year 1986-87, fees were charged in accordance with the responsible party's ability to pay, regardless of whether the services rendered were required by an individualized education program. The parents of individual patients were liable for the costs of mental health care under Welfare & Institutions Code Sections 5716 and 5718, as determined under the UMDAP program. If a child were covered by insurance, the parents were required to submit insurance claims.

With the passage of Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985, the County may not charge parents for the services rendered. Further, as this legislation brings the mental health services within the ambit of federal Education for All Handicapped Children law, the County has lost substantially the ability to require parents to submit insurance claims for the rendered services. With regard to IEP children who received mental health services in prior years and who continue to receive individualized education program-mandated mental health services, this has resulted in an estimated revenue loss of \$66,000 in patient fees and third party insurance for Fiscal Year 1986-87.

In addition, in prior years school districts partially funded County contract providers who provided individualized education program services. In Fiscal Year 1985-86, County contract providers received \$204,000 from school districts. The County providers now look to the County alone to provide all the funding for treatment pursuant to individualized education programs. The estimated loss in revenue from this source is

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
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\$212,000 (\$204,000 plus a cost of living increase of 4%). Additionally, the County asserts that it had the option in prior years of billing school districts for mental health services provided pursuant to individualized education programs. As the County is now responsible for providing these services, this is no longer an option.

Prior to 1986-87, the County provided no financial contribution for mental health services rendered by providers other than the County, County contract providers, or state hospitals. Under Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9, the County may be required to pay for mental health services rendered by private therapists as well.

Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9 clearly impose on the County of Santa Clara a mandate as defined in Government Code Section 17514(a). As a result of this mandate, the County of Santa Clara will incur estimated unreimbursed costs for Fiscal Year 1986-87 in the amount of \$3,081,000 for the assessment, case management, and treatment of handicapped children pursuant to individualized education programs.

III. Federal Statutes

The Education for All Handicapped Children Act ("EHA"), 20 U.S.C. 51401 et seq., provides that a state must, in order to receive federal grants-in-aid under the Act, have in effect "a policy that assures all handicapped children the right to a free appropriate public education." 20 U.S.C. §1412(1). "Free appropriate public education" requires that special education and related services are provided at public expense, under public supervision and direction, and without charge. 20 U.S.C. §1401(a)(18); 20 U.S.C. §1412(2)(C). Related services include counseling and psychological services as may be required to assist a handicapped child to benefit from special education. 20 U.S.C. §1401(a)(17).

A state choosing to participate in the Education for All Handicapped Children program must submit a plan setting forth policies, procedures and program descriptions. 20 U.S.C. §1413. Federal grants-in-aid received by a state are allocated to local educational agencies and intermediate educational units. 20 U.S.C. §1411(d). Federal law does not provide for an allocation of the grants-in-aid to local mental health agencies. However, since California has chosen to delegate to counties the responsibility for providing Education for All Handicapped Children mental health assessment, case management and treatment, local mental health agencies must comply with federal law.

IV. Cost Recovery

Chapter 1747, Section 5, Statutes of 1984 states:

Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

Chapter 1275, Section 17, Statutes of 1985 states:

Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

The County's share of the funds appropriated by Chapter 1133, Statutes of 1986 for Fiscal Year 1986-87, is \$222,955. cost recovery from the federal portion of Medi-Cal reimbursement, and from third party insurance reimbursement for all mental health services rendered pursuant to individualized education programs is estimated to be \$820,000 for Fiscal Year 1986-87. The estimated net cost of complying with the mandate during Fiscal Year 1986-87, less the \$222,955 previously allocated to the County of Santa Clara from the total appropriation, is \$3,081,000.

The County of Santa Clara has only a limited remedy available to it, as described in Government Code Section 17556(a)(4), to "levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. "

Generally, patients or other responsible parties are charged fees for mental health services, determined by their ability to pay. Welfare & Institutions Code Section 5716. Insurance companies are billed for covered services. If the services are for individualized education program treatment,

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Dis'abled Students
Page 9

however, the services must be provided at no charge to the parents regardless of their ability to pay, and the ability of the County to obtain reimbursement from parents' insurance companies for therapy rendered pursuant to individualized education program is limited. Parents may voluntarily agree to submit insurance claim forms, but may not be compelled to do so if it would result in any cost to them, such as through a reduction of lifetime benefits or an increase in premiums. "Notice of Interpretation", 45 FR 86390-86391, December 30, 1980; Bureau of Education for the Handicapped Policy Letter, 2 EHLR 211:361, April 29, 1985.

Cost recovery from the federal portion of MediCal reimbursement and from third party insurance reimbursement from voluntarily submitted claims is estimated to be \$820,000.

There is no cost recovery from the state Medi-Cal program. In Fiscal Year 1986-87, the County of Santa Clara has entered into a negotiated net amount Short-Doyle contract with the State of California, pursuant to Welfare & Institutions Code Section 5705.2(c). Under this provision, the County receives a fixed amount of funding from the State in lieu of Short-Doyle Medi-Cal and other Short-Doyle funds. Welfare and Institutions Code Section 5705.2(f). Through this contract, the County agrees to provide services consistent with the following principles:

- (1) A continuum of mental health services which are required by statute and which are accessible and acceptable to the county population;
- (2) Mental health services which are culturally and age-appropriate to the type, amount, and intensity needed to maximize recovery;
- (3) Mental health services in the least restrictive appropriate environment available with due regard for individual constitutional rights and public safety;
- (4) Prompt evaluation and care of persons with acute disabling symptoms, especially those considered dangerous to self or others and persons with grave disabilities;
- (5) Continuity of care and treatment for persons disabled as a result of a mental disorder who need assistance in using available mental health or other community resources; and
- (6) Programs in the community which enhance the ability of the general population to cope with stressful life situations and prevent the onset of mental disorder.

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 10

Under this negotiated net amount contract, the County of Santa Clara receives an allocation from the State for Fiscal Year 1986-87 of \$21,484,875 for mental health services, including the \$222,955 allocation for the mental health assessment, case management, and treatment of handicapped children.

Pursuant to Paragraph 31(a)(3) of the contract, the County's share of costs is, to be determined under Welfare and Institutions Code Section 5705. This section provides that the net cost of all services specified in the approved county Short-Doyle plans shall be financed on a basis of 90 percent state funds and 10 percent county funds, except for state hospital services. The 10 percent county contribution is not required for mental health assessments, case management and treatment of handicapped children. Section 3, Chapter 1133, Statutes of 1986.

The Fiscal Year 1986-87 negotiated net amount contract provides generally that the County "shall provide accessible appropriate services in accordance with Federal and State regulations to all eligible clients." Client is defined as "a person who receives services pursuant to the Short-Doyle Act." Handicapped children receive services pursuant not to the Short-Doyle Act (Welfare & Institutions Code Division 5 Part, 2), but pursuant to the individualized education program provisions of Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985 (Government Code Section 7570 et seq.).

The services to be provided to handicapped children under Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985 are not specifically referred to in the contract, except insofar as the dollar allocation has made. The costs of providing the mandated services and the services required by the contract, excluding the costs associated with the mental health assessment, case management, and treatment of handicapped children, exceed the state allocation and required county match.

As calculated under Welfare and Institutions Code Section 5705 the County's share of cost for the entire Short-Doyle program would be \$2,547,225. The County, however, has budgeted an additional \$4,933,871 in general county funds for mental health services (referred to as "county overmatch"). County overmatch has been used to fund the cost of assessment, case management, and treatment of handicapped children program which is in excess of the \$222,955 State allocation to the County.

V. Cost Savings

There are no cost savings attributable to Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9.

VI. Petition

We request that the requirements of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 California Administrative Code Division 9 officially be declared state mandates, and that reimbursement in full be declared for all costs associated with the mandate.

VII. Declaration

I, Ken Meinhardt, M.D., as Director of the Mental Health Bureau for the County of Santa Clara, am familiar with the facts described in this petition. In this capacity, I am responsible for planning and implementing mental health services for the County of Santa Clara. I have been employed by the County of Santa Clara since 1966, and have been responsible for planning and implementing mental health services since 1981.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to any matters which are therein stated as information or belief, and as to those matters I believe them to be true.

July 30, 1987
Date

Ken Meinhardt M.D.
Ken Meinhardt, M.D.

San Jose, California
Place

Department 1-14-87 rrz Upon return send copy to Controller. 2-10-87 Received pink tagged origir & sent copy to Controller rrz

NEGOTIATED NET AMOUNT CONTRACT

FY 1986-87

BETWEEN

STATE DEPARTMENT OF MENTAL HEALTH

AND

SANTA CLARA COUNTY

December 23, 1986

EXHIBIT "D-1"

NEGOTIATED NET AMOUNT CONTRACT INDEX

Fiscal Year 1986/87

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CONTRACTOR'S COPY

CONTRACTOR
STATE AGENCY
DEPT. OF GEN. SER.
CONTROLLERAGREEMENT, made and entered into this 1st day of July, 1986,State of California, by and between State of California, through its duly elected or appointed,
ed acting

OFFICER ACTING FOR STATE

Director/Div. of Admin.

AGENCY

State Department of Mental Health' (DMH)

NUMBER

86-77100

called the State, and

County of "Santa Clara

called the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State
after expressed, does hereby agree to furnish to the State services and materials, as follows:

with service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)

Whereas, the Department of Mental Health (hereinafter referred to as STATE)
administers the Short-Doyle Act, Welfare and Institutions Code, Sections 5600
seq., which provides for the rendering of mental health services in
community settings throughout California; andWhereas, the STATE is desirous of negotiating a net amount contract with
Santa Clara County (hereinafter referred to as CONTRACTOR or COUNTY) for the
provision of mental-health services to its residents; andWhereas, the COUNTY is agreeable to the rendering of such services on the terms
and conditions hereinafter, set forth; andWhereas, such agreements are authorized and provided for by the provisions of
Section 5705.2(c) of the Welfare and Institutions Code;Therefore, the STATE and the COUNTY do hereby enter into the following
agreement:

The provisions on the reverse side hereof constitute a part of this agreement

WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written;

STATE OF CALIFORNIA		CONTRACTOR	
Department of Mental Health		CONTRACTOR (IF OTHER THAN AN INDIVIDUAL STATE WHETHER A CORPORATION, PARTNERSHIP, ETC.)	
AUTHORIZED SIGNATURE <i>Lynn E. Whetstone</i> 2-2-87		BY (AUTHORIZED SIGNATURE) <i>Deanne McKenna</i>	
Dep. Director, Div. of Administration		TITLE Chairperson, Board of Supervisors	
		ADDRESS	
DIVISION ON SHEETS, EACH BEARING NAME OF CONTRACTOR		PROGRAM/CATEGORY (CODE AND TITLE)	
Department of General Services		Local Assistance	
Use Only		FUND TITLE General	
Exempt from compliance with the Public Contract Code and from Department of General Services review per Section 5707.1 and 5709.8 of the Welfare and Institutions Code.		OPTIONAL USE)	
AMOUNT ENCUMBERED \$ 26,197,492		ITEM 4440-131-001	
UNENCUMBERED BALANCE \$		CHARTER 186	
ADJ. INCREASING ENCUMBRANCE \$		STATUTE 1986	
ADJ. DECREASING ENCUMBRANCE \$		FISCAL YEAR 1986	
		OBJECT OF EXPENDITURE (CODE AND TITLE) Negotiated Net Amount Contract	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		B.A. NO.	
SIGNATURE OF ACCOUNTING OFFICER <i>C.A. Mancey</i>		DATE 1/16/87	
I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with and this document is exempt from review by the Department of Finance.			
SIGNATURE OF OFFICER SIGNING ON BEHALF OF THE AGENCY		DATE 1/26/87	

FEB 03 1987

2-10-87 received pink tagged original & sent copy to Controller

1. The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract.

2. The Contractor, and the agents and employees of Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.

3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.

4. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.

5. Time is the essence of this agreement.

6. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

7. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

This contract is in compliance with all the provisions of SAA 1240-1247. Pertinent information and materials are attached in accordance with SAM.

ARTICLE I: STANDARD TERMS AND CONDITIONS

1. The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract.

2 The Contractor, ~~and~~ the agents and employees of Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.

3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon-demand.

4. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.

5. Time is the essence of this agreement

6. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

7. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

8. Authority

This agreement is authorized by, and subject to, the provisions of Section 5705.2 of the Welfare and Institutions Code (See Exhibit "A").

9. Control Requirements

This agreement is subject to all applicable federal and state laws and regulations. The provisions of this contract are not intended to abrogate any provisions of law or regulation existing or enacted during the term of this contract.

10. Amount Of Contract

The total net amount of State General Fund dollars payable by the State to the County under this contract shall not exceed \$26,197,492. The County share of state hospital costs shall be offset against this amount.

11. Term Of Contract

The term of this contract shall be from July 1, 1986, through June 30, 1987. The State and the County agree that, in the event that a new contract is not negotiated and executed prior to July 1, 1987, this contract will be extended in full force and effect in all of its terms until October 1, 1987, or until the new contract is signed for 1987/88, whichever occurs first.

12. Chief Negotiator

- a. The State has designated the Department of Mental Health's Deputy Director of the Division of Community Programs to be its Chief Negotiator.
- b. The County has designated the Director of County Mental Health to be its Chief Negotiator.

13. County Responsibility For Operation/Maintenance

The County agrees to furnish all space, facilities, equipment, and supplies necessary for its proper operation and maintenance.

14. *Conflict Of Interest

The County affirms that it **presently** has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interests, direct or, indirect, which would conflict in any manner or degree with the performance of **services** under this agreement. The County further agrees that, **in** the performance of this contract, no person having any such interest shall be employed or retained under this contract except as mutually agreed by both parties.

The State agrees that persons having personal or professional conflict with the intentions and goals of this contract will not be assigned to the task of monitoring this contract.

15. State Holds County Harmless Against Claims And Losses

The State agrees to indemnify, defend and hold harmless the County, its officers, agents and employees from and against any and all claims and losses whatsoever, accruing or resulting to any person, firm or corporation for damage, injury or death arising out of or connected with the State's performance under the terms of this agreement. The State agrees to provide consultation and assistance to the County in any lawsuit challenging the validity of the statutes or regulations pursuant to which this contract was executed.'

16. Nondiscrimination Provision

- a. During the performance of this contract, **the** County and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, martial status, age or sex.

The County and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination.

- b. The County shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.
- c. The County agrees to the provisions of Section S04 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified **handicapped** persons in all

federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Welfare Agency, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

17. Use/Reproduction of Data

The State reserves the right to use and reproduce all reports and data produced and delivered pursuant to this agreement, and reserves the right to authorize others to use or reproduce such materials, unless of a donfidential nature.

18. Copyrights/Patents

Except as provided in this agreement, the County may seek patents or copyrights for inventions, copyrightable materials or other **original** work product which has been commissioned, funded or developed by the County with funds provided by the Department, or otherwise produce? in performance of this contract, or in contemplation thereof, subject to the rights of the Department as set forth in this section.

Copyrightable materials, for the purposes of this section, may include, but not be limited to, data, plans, drawings, specifications, reports, operating manuals, notes or other consultant work. The State shall have the right to manufacture, reproduce, publish, use and/or distribute all such inventions or **copyrightable material**. Upon any such inventions or copyrightable materials shall be the statement: **"COPYRIGHTED/PATENTED** (as appropriate), **YEAR** (as appropriate), **BY** (insert name of contractor); **REPRODUCED WITH PERMISSION.**"

No further manufacturing, reproduction, publication, use or distribution shall be made without permission of the County. All copyrights or patents to which this clause is applicable shall be in the name of the County. If any such inventions are patentable, or any such original work product or materials are **copyrightable**, the County may patent or copyright same except that, whenever any such patents or copyrights are applied for or sought by the County, or any employee or assignee thereof, the County shall promptly and fully report such fact to the State, which reserves a royalty-free, nonexclusive and irrevocable license to manufacture, reproduce, publish, use and/or distribute same.

-Any revenues derived from the sale of such invention or copyrighted materials by the County, or any employee or assignee thereof, shall be reported to the State and utilized by the County for the benefit of persons with mental illnesses.

19. Disputes

Should a dispute arise under this contract, the County shall, prior to exercising any other remedies which may be available, provide written notice of the particulars of such dispute to:

Chief Deputy Director
Department of Mental Health
1600 9th Street
Sacramento, CA 95814

Such written notice shall contain the contract number. The Chief Deputy Director shall meet with the County, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to the County.

20. Congressional Appropriation Of Funds

- a. it is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.
- b. It is mutually agreed that, if the Congress does not appropriate sufficient funds for the program, the State has the option to void the contract or to amend the contract to reflect any reduction of funds. Such amendment, however, shall require County approval.
- c. This contract is subject to any additional restrictions, limitation, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this contract in any manner.
- d. The State and the County agree that if Congress enacts such changes during the term of this contract, both parties shall meet and confer to renegotiate the terms of this agreement affected by

the restrictions, limitations, conditions, or statute enacted by Congress.

21. Statutory/Regulatory Amendments

This contract is subject to any restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Act or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this contract in any manner. The State and the County mutually agree that if statutory or regulatory amendments occur during the term of this contract which affect this contract, both parties shall meet and confer regarding the changes and shall renegotiate the terms of this agreement affected by the statutory or regulatory amendments.

22. Confidentiality Of Records

- a. The County shall protect from unauthorized disclosure, names and other identifying information concerning persons receiving services pursuant to this contract, except for statistical information not identifying any client, or when disclosure is authorized by federal or state statute.
- b. The County shall not use such identifying information for any purpose other than carrying out the County's obligations under this contract, except when disclosure is authorized by federal or state statute.

23. Timely Communication Between State And County

- a. The State shall report to the County in a timely manner any public or private inquiries, complaints, or reports which shall affect the operation of county mental health programs.
- b. The County shall report to the State in a timely manner any special incidents which may have impact on statewide operation of the mental health system.

24. Revenue Collection Policy

The County shall conform to all policies and procedures regarding revenue collection issued by DMH under the provisions of the Welfare and Institutions Code, Sections 5717 and 5718.

25. Expenditure of State General Funds

The County agrees that all funds paid out by the State shall be used exclusively for providing mental health services, including defraying operating and capital costs, and allowable County overhead (Welfare and Institutions Code, Section 5705.2(c)(7)).

26. Mental Health Advisory Board

Pursuant to Welfare and Institutions Code, Section 5705.2(e), the County shall keep the local Mental Health Advisory Board apprised of issues relating to the net amount contract with the State.

27. Definitions

- a. "Client" means a person who receives services pursuant to the Short-Doyle Act and is used interchangeably with the term, "patient".
- b. "Negotiated Rate" means the rate which is negotiated between the State and the County as the payment for services delivered on a per unit of service basis. The negotiated rate is calculated by dividing the adjusted gross by the total units. Such a rate is fixed and is not subject to retrospective cost adjustment. (This applies to Short-Doyle/Medi-Cal units only.)
- c. "Negotiated Net Amount" means the amount which is negotiated between the State and the County that is determined by subtracting the amount of projected revenue from the total budget for services.
- d. "Revenue" means income from government (e.g., Medi-Cal, Medicare, CHAMPUS), as well as non-government, patient-related funds.
- e. "Dedicated Capacity" means the number of service units (e.g., days, visits, staff hours) which will be offered to serve the mental health needs of the County.

ARTICLE II: PROGRAM PROVISIONS28. Program Principles

The State and County agree that the following represents the program principles of the local mental health program:

- a. A continuum of mental health services which are required by statute and which are accessible and acceptable to the county population.
- b. Mental health services which are culturally and age-appropriate to the type, amount, and intensity needed to maximize recovery.
- c. Mental health services in the least restrictive appropriate environment available with due regard for individual constitutional rights and public safety.
- d. Prompt evaluation and care of persons with acute disabling symptoms, especially those considered dangerous to self or others and persons with grave disabilities.
- e. Continuity of care and treatment for persons disabled as a result of a mental disorder who need assistance in using available mental health or other community resources.
- f. Programs in the community which enhance the ability of the general population to cope with stressful life situations and prevent the onset of mental disorder.

29. Access To Services

The County and its subcontractors shall provide accessible and appropriate services in accordance with federal and state statutes and regulations to all eligible clients.

30. Utilization Review/Quality of Care

- a. The County and its subcontractors shall establish and utilize systems to review the quality and appropriateness of services in accordance with applicable federal and state statutes and *regulations (Sections 4070, 4071, 4072, and 5624 of the Welfare and Institutions Code; and Sections

456.3, 456.4, and 456.6 of the Code of Federal Regulations (CFR) operative during the term of this contract. The Mental Health Advisory Board shall participate in and review the annual evaluation process and product.

b. The County shall have a quality, assurance system and an approved quality assurance plan which conforms to DMH standards and guidelines developed pursuant to state and federal regulations and which contains at least the following components:

(1) Utilization review of all Short-Doyle/Medi-Cal funded inpatient and clinic services.

(2) Utilization review of all Short-Doyle funded inpatient services.

(3) Interdisciplinary peer review of the quality of patient care.

(4) Monitoring of the medication regimens of Short-Doyle clients, including procedures to review:

(a) Appropriateness of the dosage levels prescribed,

(b) Effectiveness of the medications for the patient.

(c) Occurrence of any adverse reactions.

(d) Extent of patient compliance with medication plans.

(e) Level of patient information and ability to manage his/her own medication regimen.

c. The State shall not issue policies or directives, during the term of this agreement, which change the utilization review requirements to be met by the County. The State shall not amend previously agreed-upon utilization review policies and directives unless such policies and directives apply to the entire State mental health system, or are negotiated with the County prior to their implementation.

d. The State shall review the existence and the effectiveness of the County's and subcontractors' utilization review systems in accordance with applicable federal and state laws and regulations.

ARTICLE III: FISCAL PROVISIONS

31. Payment Provisions

- a. The total amount payable by the State to the County under this agreement shall be in accordance with the following schedule:

(1) State General Funds

- (a) The total net amount of State General Fund dollars payable by the State to the County under this contract shall not exceed **\$26,197,492**. The County share of state hospital costs and any monthly claim paid to the County under the provisions of DMH Policy Letter 86-29 shall be **offset** against this amount.
- (b) The State shall pay the County at the beginning of each month, **1/12** of the contract amount in accordance with the budget attached hereto and labeled **Exhibit "B"**.
- (c) If the contract is extended pursuant to Item 11 of this contract, the source of funds advanced to the county during the extension period shall be the local assistance allocation available to the county for FY 1987-88.

(2) Federal Title XIX Funds

- (a) The County shall be reimbursed federal funds (subject to the availability of such funds) for the cost of services rendered to federally eligible Medi-Cal beneficiaries. Reimbursement of expenditures will be made to the County upon receipt of these funds from the Department of Health Services in **accordance with** current procedures.
- (b) The rates for claiming Medi-Cal reimbursement shall be in accordance with Exhibit "C". These rates are fixed and are not **subject** to cost adjustment. The contractor shall **conform to** current policies and procedures regarding the preparation and submission of **Short-Doyle/Medi-Cal** claims.

(3) County Share Of Costs

The County share of costs shall be determined in accordance with Welfare and Institutions Code, Section 5705. Such costs shall be computed and entered in Exhibit "B". This amount, regardless of actual cost, shall be bound in accordance with Section 5702(b)(1) of the Welfare and **Institutions Code**.

(4) County Overmatch

Section **5705.2(b)(1)** of the Welfare and Institutions Code does not apply to County overmatch and such funds shall not be bound.

b. State Hospital Costs

- (1) The County's share of cost of 15% shall be deducted from the monthly claims. This percentage will be applied to the actual net cost of state hospital services, based upon the actual number of days used.
- (2) It is the intention of the parties that the County's usage shall not exceed the number of days allocated. If the County's usage exceeds the number of allocated days, the County shall be assessed for such excess usage in accordance with the statewide policy in effect on execution of this contract.
- (3) The County will not be entitled to any savings resulting from the planned or unplanned underuse of its allocated days unless a specific proposal for underuse and **savings is** negotiated and approved by the Department.
- (4) The net cost of state hospital services shall be based on the average cost per day less projected revenues multiplied by 27,343 days. The State and County agree to mutually plan the development of state hospital services that are appropriate for County residents referred to **the** state hospitals.

To the extent that resources are available in the budget, needed program changes can be made in a timely fashion, and the needs of all local programs using the particular state hospital are taken into consideration, such services shall be inaugurated during the 1986-87 fiscal year.

c. Categorical Funds

Any funds included in the negotiated net amount that by Department policy are to be expended in specified program categories may only be expended in those categories.

32. Cost Report

The County and its providers shall submit year-end cost reports to the State no later than November 30, 1987.

The cost reports shall be submitted in accordance with the State's CR/DC system requirements, but will not be used for fiscal year-end settlement of Short-Doyle or Short-Doyle/Medi-Cal services.

ARTICLE IV: CONTRACT ADMINISTRATION

33. Contract Objectives

a. Dedicated Capacity: Program

The program's dedicated capacity is the provision by the County of the mode and service capacity as negotiated by the County and the State. The dedicated capacity agreed upon can be found in **Exhibit "F"**.

The County shall bear the financial risk in providing any and all mental health services to the population described and enumerated in the approved contract within the net amount. The county is responsible to ensure that services are offered throughout the term of the contract. The State assumes the risk that fewer service units will need to be provided.

b. Dedicated Capacity: Funding

The program's total funding is intended to meet the expenses of the program's dedicated capacity. This total will be a combination of fixed funds (bound by law) such as Short-Doyle State General Funds and legally required County match and variable funds from Short-Doyle/Medi-Cal federal participation, Medicare, patient fees and insurance, grants, and other miscellaneous sources.

The County assumes the risk and responsibility for the collection of the variable funds. The State assumes the risk of the approval of expenditure of the fixed funds even if dedicated capacity is underutilized.

34. Accrued Savings

The county shall propose alternative uses for funds which are not expended for mental health purposes during the contract period. The State and the County agree that accrued savings may be used for the purposes described in Exhibit "H", "Approved Uses of Accrued Savings". Exhibit "H" may be amended by mutual agreement of the State and the County. Exhibit "G", "Allocation Savings Detail", will be completed showing the purposes to which the prior year savings will be used.

35. Contract Amendments

This contract may be amended by mutual consent. However, the State and the County shall not amend the contract after March 1 of the fiscal year unless amendments are the result of statutory and regulatory amendments. Should either party, during the term of this contract, desire a change in this contract, such **change shall** be proposed in writing to the other party.

36. Contract Termination Or Non-Renewal

This agreement may be cancelled at any time by either party for reasonable cause related to a substantial violation of the terms of this contract by giving sixty (60) days written notice to the other party. Should the agreement be cancelled, the County shall provide necessary documentation to the State for the purpose **of** initiating a Short-Doyle plan.

37. Contract Monitoring

a. Purpose

The State shall monitor the County program to assure compliance with contract objectives.

b. Method

The County shall provide relevant information to the State on a monthly basis for the purpose of contract monitoring.

A State representative shall meet with County mental health representatives monthly, or as needed, to discuss the information submitted to the State and any problems that might be arising.

The State and the County shall mutually develop acceptable performance variances. These variances shall determine when action should be taken to **resolve** the underlying problems.

In addition, pursuant to Welfare and Institutions Code Section **5705(b)(1)** and **5705.2(c)(3)**, the County shall provide the State any other information it may need to monitor the contract;

38. State Evaluation

The County understands that the product(s) and the staff services provided in fulfillment of the requirements of this contract will be evaluated by the State in accordance with applicable federal and state statutes and regulations.

ARTICLE V: SUBCONTRACTS

39. Subcontracts

Subcontracts for which negotiated rates or negotiated **net amounts have** been approved by the State in the past will not require the County **to complete** the Policy-Letter **DMH 84-10** process. **NNA or NR** contracts between the County and providers must be listed in Exhibit **"E"**. Any new subcontract or change to an existing contract completed after this agreement has been signed is subject to the **provisions of DMH 84-10**.

40. Subcontracts In Excess Of \$10,000

The County agree= to **place** in each of its subcontracts, which are in excess of \$10,000 and utilize State funds, a provision that: **"The** contracting parties shall be subject to the examination **and audit** of the Auditor, General for a period of **three (3)** years after final payment under **contract (Government Code Section 10532).**"

ARTICLE VI: REQUIRED DATA

41. Records Maintenance

- a. The County agrees to maintain books, records, documents, and other evidence necessary to **facilitate contract monitoring.**
- b. The County shall maintain adequate clinical and fiscal records relating to patients served under the terms of this contract, as required, to meet the **needs** of the State in monitoring quality, quantity, and accessibility of services. Information on each individual patient shall include, but not be limited to, **admission** records, diagnostic studies **and** evaluations, patient interviews and progress notes, and records of services provided by various service locations, in sufficient detail to make possible an evaluation of services provided and compliance with this contract.
- c. The County shall maintain on file and have **readily** accessible to the State:
 - (1) The name of the agency or agencies which, provide conservatorship investigation and administration/case management services.
 - (2) Information **about use** of- mental health services by minority populations.
 - (3) A quality **assurance plan** approved by the State and any approved changes to the plan.
 - (4) An affirmative action plan adopted by the Board of Supervisors.
 - (5) Evidence of efforts to maintain equitable minority representation on the Mental Health Advisory Board and, if needed, a timetable achieving such representation.
 - (6) State-approved Certification Review Hearing procedures (Welfare and Institutions Code, Section 5651(e)(3)).
 - (7) A State-approved plan for providing case management services (Welfare and Institutions Code, Section 5651(e)(4)).
 - (8) The name of the patients' rights advocate. Whenever the advocate position is vacated and a new appointment is made, the County shall

notify the Patients' Rights Office, State
Department of Mental Health.

42. Submission of Reports.

- a. "The County shall submit to ~~the~~ State monthly; within 60 days of the month of service:
- (1) A minimum set of **data on each client per DMH** Policy Letter 84-11 or subsequent **DMH** policy.
- b. The County shall submit to the State quarterly:
- (1) A report- ~~on~~ convulsive. **treatments administered** (Form **MH 1699**), pursuant to Welfare and Institutions Code, Section 5326.15.
 - (2) A report on services provided to persons detained in jail facilities (Form **MH 3823**), pursuant to **Welfare** and Institutions Code, Section 5402.
 - (3) A report on involuntary detentions (Form **MH 3825**), pursuant to Welfare and Institutions **Code**, Section 5402.
 - (4) A report on conservatorships established by the Superior Court of the County (Form **MH 3824**), pursuant to Welfare and Institutions Code, Section 5402.
 - (5) A report of denial of rights/seclusion and restraint (Form **MH 308**), pursuant to **Welfare** and Institutions Code, Section 5326.1.

ARTICLE VII: EXHIBITS

43. contract Exhibits

The County agrees to provide the information and offer the services-in accordance with Exhibits "A" through "E" which are attached thereto and by this reference are hereby made a part of this agreement:

- Exhibit A - Welfare & Institutions Code, Section 5705.2
- Exhibit B - Negotiated Net Amount, Summary
- Exhibit C - Short-Doyle/Medi-Cal Rate
- Exhibit D - Children's Services,
- Exhibit E - NNA/NR Contracts Between County-and
Providers
- Exhibit F - Allocation Detail
- Exhibit G - Allocation 1985-86 Fiscal Year Savings
Detail
- Exhibit H - Approved Uses of Accrued Savings

Welfare & Institutions Code
Section 5705.2

Amended by
Stats. 1983, Ch. 1207

48

SEC. 3. Section 3705.2 of the Welfare and Institutions Code is amended to read:

5703.2. (6) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given preference in contracts for services under this division.

(b) Negotiated net amounts or rates may be used as the cost of services only in accordance with the following provisions:

(1) A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue from nongovernment, patient-related funds. This net amount shall be negotiated between the provider of services and the county mental health program, and may be used by providers in contracts with the county. The negotiated net amount shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the net amount. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should

the negotiated net amount be disapproved after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with the provisions of Section 5705.1. Once the negotiated net amount is approved by the State Department of Mental Health, all participating government funding sources shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county Short-Doyle annual plan for each fiscal year to the extent that the governmental funding source participates in funding the county mental health program. Any federal authorization or any waiver that is necessary to allow Medi-Cal funds for mental health services to be bound pursuant to this paragraph, shall be sought by the State Department of Mental Health and the State Department of Health Services. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan or contract.

(2) A negotiated rate is the payment for services delivered on a per unit of service basis. This rate shall be negotiated between the provider of services and the county mental health program. The negotiated rate shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the rate. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should the negotiated rate be disapproved after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with the provisions of Section 5705.1. Once this rate is approved by the State Department of Mental Health, all participating government funding sources shall be bound by that amount as the cost of providing that service for that county mental health program to the extent that the governmental funding source participates in funding the county mental health program. Any federal authorization or any waiver that is necessary to allow Medi-Cal funds for mental health services to be bound pursuant to this paragraph, shall be sought by the State Department of Mental Health and the State Department of Health Services. Where the State Department of Health Services promulgates regulations for

termining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and ordered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

(c) The director may negotiate net amount contracts between counties and the State Department of Mental Health in lieu of the annual Short-Doyle plan and budgets. Provisions of the contract shall include at least the following:

(1) Assurance of an adequate quality and quantity of services.

(2) Provision for access to services by patients residing within the contracting county.

(3) Statistical and cost reporting necessary to maintain the statewide mental health data base. For the purpose of verifying the performance to provisions of the contract and the establishment of data necessary for subsequent contract negotiation, the State Department of Mental Health shall have access to financial and service records.

(4) A method for reimbursing the State Department of Mental Health for state hospital obligations incurred by the county.

(5) Assurance that citizen participation as described in Section 06 shall be achieved.

(6) A negotiated net amount contract shall not preclude the county from subcontracting to purchase all or part of the delivery of mental health services from noncounty providers.

(7) Assurance that all funds paid out by the state under this subdivision shall be used exclusively for the purpose of providing mental health services, which shall include, but not be limited to, defraying operating and capital costs.

Contracts entered into under this subdivision shall be subject to all the provisions of subdivisions (a) and (b).

(d) It is the intent of the Legislature that, until July 1, 1987, not more than three county contracts as specified in subdivision (c) shall be negotiated. Those contracts shall be effective no earlier than July 1, 1984. Negotiations shall be completed by October 1 of each year and the contract shall be retroactive to July 1 of that year.

(e) It is not the intent of the Legislature to preclude counties from reimbursing providers by using methods other than those in this section when these counties are part of a Short-Doyle and Medi-Cal consolidation program established pursuant to Article 5 commencing with Section 14660) of Chapter 8.8 of Part 3 of Division

(f) Counties that propose to negotiate rate or net amount contracts with the State Department of Mental Health pursuant to

subdivision (c) in lieu of the Short-Doyle annual plan shall inform the Mental Health Advisory Board of its intentions in the following ways:

shall submit to the board an outline of issues to be negotiated and the intended agreement on each issue.

(2) At each regular meeting of the board, during the period of negotiations, the local program director shall inform the board of progress on each issue and shall request the board's advice on how to further proceed on the negotiations.

(g) The county shall bear the financial risk in providing any and all mental health services to the population described and enumerated in the approved contract within the net amount.

(h) This section shall remain in effect only until July 1, 1987, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1987, deletes or extends such date.

SEC. 4. Section 5705.2 is added to the Welfare and Institutions Code, to read:

5705.2. Negotiated net amounts or rates may be used as the cost of services only in accordance with the following subdivisions:

(a) Negotiated net amounts may be used as the cost of services in a contract which provides for the delivery of all or part of the total county Short-Doyle annual plan for each fiscal year. The negotiated net amount shall be approved by the State Department of Mental Health prior to commencing services for reimbursement. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program cost accounting and any other information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health emphasizing success in program outcome versus providers' expenditures. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan. For negotiated net amounts contracts that provide for the delivery of 75 percent or more of the total county Short-Doyle annual plan, the contracting organization shall bear the financial responsibility for the local match requirement, which shall not include state or federal funds directly allocated to the contracting organizations, for the portion of the county program covered by the contract.

(b) Negotiated rates may be used as the cost of services in contracts by providers with counties. The negotiated rate shall be approved by the State Department of Mental Health prior to commencing services for reimbursement. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program cost accounting and any other information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

This section shall become operative July 1, 1987.

SEC. 5. This act is an urgency statute necessary for the

immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to be effective in the 1983-84 fiscal year for effective mental health planning it is necessary that this act take effect immediately.

NEGOTIATED NET AMOUNT SUMMARY

EXHIBIT

	Regulars-D	CRTS	Homeless	Section 18	Target Supple.	Supple. Rates	S . E . P . Program	Total
Adjusted Gross Program Cost	\$38,938,893	1,595,478	1,322,706	503,716	246,999	607,918	287,722	43,215,710
Less:								
Grants	376,624	-0-	-0-	-0-	-0-	-0-	-0-	376,624
Patient Fees	1,134,694	-0-	95,458	20,840	-0-	-0-	-0-	1,250,992
Patient Insurance	828,590	-0-	-0-	-0-	-0-	-0-	-0-	828,590
Medi-Cal Federal	9,425,234	-0-	-0-	-0-	-0-	-0-	-0-	9,425,234
Medi-Cal Non-Federal	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Medicare	1,778,377	-0-	-0-	-0-	-0-	-0-	-0-	1,778,377
Cons. Administration	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Other	169,593	-0-	342,882	-0-	-0-	37,453	39,994	589,922
Suppl Rates/S.E.P.	-0-	-0-	-0-	-0-	-0-	570,465	222,955	570,465
county Overmatch	4,909,099	-0-	-0-	-0-	-0-	-0-	24,773	4,933,872
Total Revenue	18,662,205	-0-	438,340	20,840	-0-	507,918	287,722	19,977,031
Net Cost	20,276,688	1,595,478	884,366	-482,876	246,999	-0-	-0-	23,238,679
County Share	2,251,024	159,548	88,437	48,288	24,700	-0-	-0-	2,547,225
1. State Share	18,025,664	1,435,930	795,929	434,588	222,299	-0-	-0-	20,691,454
2. Medi-Cal State Share	4,712,617							4,712,617
		-0-	-0-	-0-	-0-	-0-	-0-	
3. Medi-Cal Non-Fed	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
4. Suppl Rate & S.E.P.	-0-	-0-	-0-	-0-	-0-	570,465	222,955	793,420
Total Lines 1, 2 and 3	22,738,281	1,435,930	795,929	434,588	222,299	570,465	222,955	26,197,492

EXHIBIT B

COLLAPSED SHORT-DOYLE/MEDI-CAL RATES

FY 1986-87

<u>Service Function</u>	<u>Units of Service</u>	<u>Estimated cost</u>	<u>Rate</u>
Inpatient	22,959	9,460,098	412
Group	64,982	5,183,698	80
Individual	112,175	10,384,645	93
Hospital-Based Crisis	7,124	1,807,353	254

CHILDREN'S SERVICES

For children's services (ages 0 - 17) specify in the following format the distribution of costs for all services to children (all modes).

	(1)	(2)	3	(4)	(5)
					% SGF Allocation Planned For Children and Adolescents FY 1986-87
			Ages 0-17 As % of Total	% SGF For Children's Services FY 1983-84	
	<u>Total</u>	<u>Ages 0-17</u>			
1. Adjusted Gross Program Costs (Local Only)	\$27,654,828	\$4,853,470	17.5%	17.5%	21.3%
2. State Hospital Gross Program Costs	3,536,270	\$ 618,844	17.5%	17.5%	27.0%
3. Total Adjusted Gross Program Costs, All Programs	31,191,098	\$5,472,314	17.5%	17.5%	22.1%

NNA/NR CONTRACTS BETWEEN COUNTY AND PROVIDERS

The following providers will operate under a negotiated net amount or negotiated rate contract during FY 1986-87:

<u>Provider #</u>	<u>Provider</u>	<u>Mode/CC</u>	<u>Net Amount</u>	<u>Net Rate</u>
4371	Gardner			
	Medication	15/60		\$ 57.42
	Group	15/50		\$ 73.95
	Individual	15/40		\$ 83.43
	Assessment	15/30		\$ 87.06
4357	Chamberlain's			
	Individual	15/40		\$ 05.99
	Day Treatment	10/81		\$ 89.87
4315	Hope			
	Medication	15/60		\$ 68.05
	Group	15/50		\$ 52.03
	Individual	15/40		\$ 85.01
	Assessment	15/30		\$109.05
4308	Adult & Child Guidance			
	Medication	15/60		\$ 45.04
	Group	15/50		\$ 65.01
	Individual	15/40		\$ 87.01
	Assessment	15/30		\$ 96.93
4381	San Jose Children's Health Council			
	Individual	15/40		\$ 91.43
	Assessment	15/30		\$ 91.99
4300	Children's Health Council-Palo Alto			
	Group	15/50		\$ 65.04
	Individual	15/40		\$ 91.99
	Assessment	15/30		\$ 97.01
	Day Treatment	10/81		\$ 91.61
4345	The Bridge			
	Medication	15/60		\$ 71.04
	Group	15/50		\$ 53.66
	Individual	15/40		\$ 82.17
	Assessment	15/30		\$ 88.85
	Day Treatment	10/81		\$ 80.00

Exhibit E (continued)

<u>Provider #</u>	<u>Provider</u>	<u>Mode/CC</u>	<u>Net Amount</u>	<u>Net Rate</u>
4301	Eastfield-Campbell	Junior High		
	Individual	15/40		\$ 86.88
	Day Treatment	10/81		\$ 70.00
8305	Eastfield-Las Lomas			
	Individual	15/40		\$ 82.00
	Day Treatment	10/81		\$ 70.99
8338	Eastfield-Carlton			
	Individual	15/40		\$ 81.92
	Day Treatment	10/81		\$ 69.99
8307	Eastfield-Reed			
	Individual	15/40		\$ 91.00
	Day Treatment	10/81		\$ 87.03
8306	Eastfield-George			
	Individual	15/40		\$ 82.49
	Day Treatment	10/81		\$ 70.51
8304	Eastfield-Aftercare			
	Individual	15/40		\$ 73.03
8340	Eastfield-Adolescent	In-Home		
	Day Treatment	10/81		\$172.95
4395	Asian Americans for Community Involvement			
	Medication	15/60		\$ 65.00
	Group	15/50		\$ 55.00
	Individual	15/40		\$ 85.19
	Assessment	15/30		\$110.01

NOTE: These contracts receive Medi-Cal funds on a negotiated net rate basis and Short-Doyle funds on a cost reimbursement basis.

DW:sh:gw 12/22/86

b.20-2

FY 1986-87 ALLOCATION DETAIL

Dedicated Capacity

Funding Source	SGF Amount	-----Units of Service-----					Continuing Care
		Outreach	24-Hour	Day Services	Outpatient		
Regular Short-Doyle	\$22,515,326	57,791	81,285	54,885	169,538	38,539	
CRTS	1,435,930	-0-	31,912	9,038	2,218	19,591	
Homeless	795,929	7,942	23,027	13,041	-0-	3,842	
Jail Diversion Section 18	434,588	-0-	3,110	-0-	-0-	-0-	
Target Supplement Fund	222,299	-0-	-0-	-0-	-0-4	-0-	
Supplemental Rates	570,465	-0-	-0-	-0-	-0-	48,155	
S.E.P.	222,955	-0-	-0-	**	**	**	
TOTALS	\$26,197,495	65,733	139,334	76,964	171,756	110,127	

* Program has received general approval as an outpatient geriatric diagnostic service. Detailed program has not been developed at this time.

** Service providers undetermined at this time.

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ESTIMATED SERVICES 7/1/86 THOUGH 6/30/87

Dedicated CapacityUnits of Service

<u>Funding Source</u>	<u>SGF Amount</u>	<u>Outreach</u>	<u>24-Hour</u>	<u>Day Services</u>	<u>Outpatient</u>	<u>Continuing Care</u>
Regular Short- Doyle						
CRTS						
Womeless	\$489,000"					3,750 Hours
Supplemental Rates	184,356					<u>16,535</u> Days
TOTALS	\$ 673,356					

Other
(Operating
or Capital
Costs, etc.)

* These funds will be spent in the following areas:

- 1) Additional case management services and overnight vouchers until the new overnight shelter can be completed \$162,600
- 2) Development of new programs benefiting the homeless for tenant education, para-transportation, supportive housing, and a revolving loan fund. 80,800
- 3) construction and remodeling of facilities for homeless programs, including a dining hall/kitchen for the bed and breakfast program and a fire escape for Costa House 80,000
- 4) Furnishings for homeless programs including the overnight shelter, Costa House, the Bridge Supportive Housing Program and case Mangement. 165,600

TOTAL

~489,000

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b.19134

APPROVED USES OF ACCRUED SAVINGS

Program savings accrued during the contract period from July 1, 1986 through June 30, 1987, may **be** applied toward funding **of** the following:

- Regular Short-Doyle funding will be **used for** services in the areas

of outreach, **24-hour care**, day services, **outpatient**, or

continuing care.

- Categorical funding will be used for services in the appropriate

categorical area, such as services for the homeless mentally ill

or supplemental services for board and care residents.

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	NO. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	SO. a. REGION 4550	C M H SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VAL. PAVIL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
IDENTIFIED REVENUES																
PATIENT FEES	3714	e	2,000	e	15,777	52,600	99,306	39,000	50,485	257,169	e	e	87,000	a	87, me	346,169
PATIENT INSURANCE	9715	0	e	e	38,826	181,700	177,330	66,000	94,485	478,341	0	a	341,000	a	341,000	819,341
MEDICARE	9498	25,700	0	e	0	49,200	78,691	205,300	50,187	383,378	a	0	1,395,000	a	1,395,000	1,884,878
FED. MEDI-CAL (FED ONLY)	9481	0	47,519	1,143,073	55,500	166,100	206,745	742,835	94,605	2,408,058	0	a	2,177,000	e	2,177,000	4,632,598
SHORT-DOYLE CATEGORICAL																
-HOMELESS ROLLOVER	9343	e	489,000	e	0	e	e	a	e	a	a	a	a	a	a	489,000
-HOMELESS CURRENT	9343	e	883,810	0	0	a	e	a	a	a	a	a	e	a	a	883,810
-SUPPL. RATES ROLLOVER	3343	e	e	e	0	a	a	a	a	a	a	a	a	a	a	0
-SUPPL. RATES CURRENT	9343	e	575,051	e	0	0	a	a	a	a	a	e	0	a	e	575,051
-JAIL DIVERSION	9343	0	434,588	e	0	a	0	e	0	e	a	a	e	a	a	434,588
-TARGETED RATES	9343	222,299	0	0	0	a	a	a	e	0	a	a	a	a	e	222,299
OTHER REVENUES																
TATE MANDATED COST	9403	139,000	0	e	0	0	0	0	a	0	a	a	a	a	0	139,000
-AB300 FUNDS	9419	e	0	e	0	0	0	0	a	a	a	133,387	a	a	133,387	133,387
-BLOCK GRANT	9514	e	37,593	56,837	0	0	0	0	a	56,837	0	a	a	a	a	94,430
-AB3632	9716	e	e	84,491	0	0	0	0	a	84,491	a	a	a	a	a	84,491
FEE FOR SERVICE M/C																
-PHARMACY	9716	e	0	125,000	a	0	0	0	a	125,000	a	a	a	a	a	125,000
SE	9717	a	a	e	a	0	0	0	a	a	a	a	a	3,198,300	3,198,300	3,198,300
YIL INCOME	9716	0	e	a	10,010	0	0	0	0	10,010	a	a	a	0	0	10,010
ANTI-CD FROM DRUG ABUSE	9716	4,893	e	0	a	0	0	0	0	0	a	0	a	a	e	4,893
TOTAL IDENT. REVENUE		391,892	2,389,582	1,409,401	128,113	369,600	562,072	1,052,335	289,763	3,083,284	e	133,387	4,000,000	3,198,300	7,331,607	13,916,365
NET		5,206,800	8,119,259	4,414,016	641,432	1,094,920	2,111,630	2,226,541	899,020	11,307,567	2,051,288	1,647,375	4,065,083	1,69,868	8,733,606	33,446,512

CRTS

1,436

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	C S S SUBSYSTEM	C M H ADMIN	ADOLE. DY TX	NO. CO. REGION	WEST VALLEY REGION	SAN JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT I E P S	EAST VAL. PAVIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
		4350	4380	4410	4433	4440	4460	4480	4550		4520	4540	4560	4580		
DETAIL OF CONTRACTS																
SUBJECT 2329																
CATHOLIC SOCIAL SERV			568,866	195,193						195,193					0	763,253
COMMUNITY COMPANIONS (S/D)			605,862							0					0	605,862
COMMUNITY COMPANIONS (B/S)			49,920							0					0	49,920
COMM. LIVING EXPERIENCE			616,233							0					0	616,233
BARONER			127,821	283,538						283,538					0	411,359
MIRAMONTE			712,011							0					0	712,811
THE BRIDGE (S/D)			398,282	368,582						368,582					0	766,864
THE BRIDGE (BLOCK GRANT)				52,887						52,887					0	52,887
PENINSULA CHILD. CENTER			124,831							0					0	124,831
PUBLIC ADULT / GUARDIAN			1,171,414							0					0	1,171,414
REHABIL. MENTAL HEALTH			1,693,122							0					0	1,693,122
REHABIL. M H JAIL DIVERSION			427,000							0					0	427,000
JAIL DIVERSION-UNALLOCATED			55,876							0					0	55,876
ZONTA			232,831							0					0	232,831
SUPPL RATE CONTRACTS										0					0	0
ALI BABA			24,500							0					0	24,500
BLOCK'S APT			24,500							0					0	24,500
FORIA'S			11,595							0					0	11,595
RIAGE HOUSE APT			24,500							0					0	24,500
CLAYTON MANOR			15,450							0					0	15,450
KATHERINE LODGE I			24,500							0					0	24,500
MARIUM/HEADWAY			24,500							0					0	24,500
MT. VIEW MANOR APT			11,494							0					0	11,494
PARK AVE APT			15,461							0					0	15,461
ST. JOSEPH APT			24,500							0					0	24,500
ST. LOURDES			14,304							0					0	14,304
UNALLOCATED FUNDS			295,196							0					0	295,196
HOMELESS CONTRACTS										0					0	0
COMMUNITY COMPANIONS			369,520							0					0	369,520
URBAN MINISTRY			314,243							0					0	314,243
THE BRIDGE			55,402							0					0	55,402
PERM HOUSING MENTALLY ILL			114,885							0					0	114,885
MENTAL HEALTH ADVOCACY			36,057							0					0	36,057
HOUSING INDEMN. PEOPLE			154,499							0					0	154,499
EMERGENCY HOUSING CONSOR			183,442							0					0	183,442
UNALLOCATED FUNDS			187,437							0					0	187,437
ADULT & CHILD GUIDANCE				473,280						473,280					0	473,280
A. A. C. I.				640,862						640,862					0	640,862
CHAMBERLAIN				340,374						340,374					0	340,374
CHILD HEALTH COUNS. P.A.				174,922						174,922					0	174,922
CHILD HEALTH COUNS. S.J.				172,701						172,701					0	172,701
EASTFIELD CHILD CENTER				1,316,921						1,316,921					0	1,316,921
HOPE REHABIL.				361,785						361,785					0	361,785
SAN JOSE HOSPITAL-CAPT										0	185,945				185,945	185,945
CRESTWOOD										0	50,000			0	50,000	50,000
CAPITAL CITY										0	12,000			0	12,000	12,000
HOOPER HOMES										0			50,000		50,000	50,000
FORMATION & REFERRAL				48,734						48,734					0	48,734
CLIENT RIGHTS		100,274								0					0	100,274
AB 3454 ADVOCACY		75,091								0					0	75,091
AB 3454 HEARING OFFICERS		59,568								0					0	59,568
BERMONT / RM			62,915							0					0	62,915
ALMENDEN COUNSELING CENTER		10,000								0					0	10,000

21-Oct-85

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	N.O. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	SO. CO. REGION 4550	CWH SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST PAVIL. 4580	WALL SUBSYSTEM	ACUTE SUBSYSTEM	TOTAL BUREAU
MISC ADJUSTMENT			(18,865)	(2,681)						(2,681)			26,000			26,000	13,254
SAN JOSE AMBULANCE										0			163,000			163,000	163,000
TOTAL CONTRACTS		244,933	8,679,714	4,426,298	0	0	0	0	0	4,426,298	175,945	0	239,000	0	414,945	13,765,890	
DETAIL OF PROFESSIONALIZED SERVICES SUBJECT 2322																	
EMPLOYEE RELATIONS		22,446								0						0	22,446
COUNTY PERSONNEL		100,089								0						0	100,089
AUDITS		46,424								0						0	46,424
NURSING REGISTRY		0								0						0	0
BILLING SYSTEM		115,114								0						0	115,114
MEDICAR		0								0						0	0
S		0		3,500						3,500			30,000			30,000	33,500
TICKETS		0		1,500						1,500			5,000			5,000	6,500
STUDENT INTERNS		0								0						0	0
CONSULTANTS		30,000		0					93,480	93,480			25,000	74,000		99,000	222,560
PROGRAM EVALUATION		0		0						0						0	0
MOVEMENT DISORDER		0		0						0						0	0
PORTORY SERVICES		0		54,643						54,643			20,000			20,000	75,443
INTERPETOR		0		2,000						2,000			1,500			1,500	3,500
SECURITY BOARD		0						16,727		16,727		0				0	16,727
MISC. EXPENSES		11,359	10,588			3,351	1,868		0	5,219	37,910	54,481	6,900			99,291	126,457
POOLMAN/SHI		0								0						0	0
RESOURCE PROJECT		0								0						0	0
DAY HEALTH CARE		0								0			15,000			15,000	15,000
CAPITAL CITY		0								0						0	0
TOTAL PROF/SERVICES		325,432	10,588	61,643	0	3,351	1,868	16,727	93,480	177,069	37,910	54,481	104,200	74,000	270,671	783,760	

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ATTACHMENT # 2

SUMMARY OF CHANGES TO MENTAL HEALTH'S BUDGET
FISCAL YEAR 1986/87

	SALARIES AND BENEFITS OBJECT 1	SERVICES AND SUPPLIES OBJECT 2	OTHER CHARGES OBJECT 3	FIXED ASSETS OBJECT 4	RESERVES OBJECT 6	TOTAL IDENTIFIED EXPENDITURE	REVENUES OBJECT 9	NET
APPROVED BUDGET	24,686,661	21,928,998	0	0	746,999	47,362,658	13,916,365	33,446,293
C E M A COLA	165,612	0	0	0	0	165,612	0	165,612
(1) ADD/DELETE (Y41/P93) DOWNTOWN CENTER 4480 FUNDED BY FED M/C	8,4%	0	0	0	0	8,496	a, 496	0
(2) ADD (3) Y41 FOR S E D ASSESS AND CASE MGT								
NORTH CO 4440	38,658	0	0	0	0	38,658	38,658	0
WEST VALLEY 4460	38,658	0	0	0	0	38,658	38,658	0
SAN JOSE REGION 4480	38,658	0	0	0	0	38,658	38,658	0
BUREAU ADMIN 4350	0	5,000	0	0	0	5,000	5,000	0
CMH ADMIN 4410	0	37,625	0	0	0	37,625	37,625	0
(3) PHARMACY SYSTEM BUREAU ADMIN 435%	0	(25,182)	25,182	140,000	0	140,000	140,000	0
(4) ADD (1) P96 AB 1733 ABUSED MILD SOUTH REGION 4500	38,658	0	0	0	0	38,658	38,658	0
(5) ADD (1) D96 FROM PA/G C S S REP PAYEE 4400	27,158	0	0	0	(1,865)	25,285	0	25,285
(6) ALLOCATE PART OF \$500,000 IN RESERVE								
C M H CONTRACTS 441%	0	199,072	9	0	(119,483)	79,589	79,589	0
C S S CONTRACTS 4380	0	205,025	0	0	(205,025)	0	0	0
(7) SERVICE & SUPPLIES FOR TX TEAM C M H ADMIN 4410	(21,793)	21,793	0	0	0	0	0	0
(8) ADDITIONAL SUPPL RATES FUNDING C S S CONTRACTS 4380	0	179,590	0	0	0	179,590	179,595	0
(9) ADD (1) Y41 VKLEY HLT PLAN WEST VALLEY REGION 446%	23,170	0	0	0	0	23,170	23,170	0
(10) THE FAMILY PLACE CMH ADMIN 4410	0	3,000	0	0	0	3,000	0	3,000
ADOL DY TX 4433	(3,000)	0	0	0	0	(3,000)	0	(3,000)
(11) TRANSFER W/IN OBJECT 2 CSS ADMIN 4380	0	0	0	0	0	0	0	0
(12) TRANSFER W/IN OBJ 2 CRESTWOOD INCREASE	0	0	0	0	0	0	0	0
(13) RECLASS COLA FOR PSW'S FROM SAL W/D BENEFITS	0	0	0	0	0	0	0	0
CURRENT MODIFIED BUDGET	25,008,928	22,555,001	25,182	140,000	425,626	48,149,657	14,512,467	33,637,190

ATTACHMENT #3

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	CSS SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	NO. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	SO. CO. REGION 4500	C M H SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VAL. PAVIL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
OBJECT 1																
PERM SALARIES	1185	1,131,830	1,216,240	575,562	496,155	1,112,820	2,002,779	2,401,018	785,365	7,374,699	1,119,974	1,128,884	4,136,972	1,655,865	8,840,895	17,763,664
SALARIES W/D BENEFITS	1186	50,000	0	0	0	0	0	0	0	a	0	75,728	0	0	75,728	125,728
TEMPORARY HELP	1187	0	0	0	8,715	0	4,410	0	0	13,125	399,000	58,106	247,562	158,402	863,070	876,195
RETIREE MEDICAL	1183	9,750	9,750	3,750	4,500	8,211	15,629	18,211	471	57,062	3,500	12,000	46,250	22,966	86,716	163,278
OVERTIME	1191	0	0	1,175	0	0	0	0	0	1,175	0	32,838	196,478	125,817	354,333	355,512
PREMIUM PAY	1193	504	3,024	504	4,536	3,528	5,544	17,640	4,536	36,288	79,800	65,411	255,571	188,273	629,055	668,871
SALARY SAVINGS	1154	(43,386)	(43,446)	(36,452)	(19,973)	(42,043)	(78,788)	(96,381)	(33,606)	(307,243)	(57,082)	(56,059)	(190,422)	(85,347)	(389,630)	(783,785)
HEALTH INSURANCE	1196	91,650	91,650	35,250	42,389	77,188	147,386	171,188	63,088	536,400	51,700	183,355	430,169	216,288	801,468	1,521,168
FICA	1157	75,767	23,624	36,386	34,135	73,252	133,293	159,547	55,765	492,307	66,695	87,075	329,710	138,596	622,076	1,273,774
RETIREMENT	1198	175,241	188,665	88,897	78,017	173,646	310,562	373,614	122,543	1,147,685	186,026	184,581	685,464	284,185	1,340,256	2,851,847
WORKERS COMP.	1155	11,097	11,950	5,634	5,022	10,941	19,783	23,708	7,751	72,759	15,668	12,473	47,136	21,513	96,790	192,596
TOTAL BENEFITS		363,505	385,639	163,437	163,577	343,238	626,629	746,268	256,264	2,306,213	325,509	339,528	1,538,729	683,532	2,947,378	6,002,663
TOTAL OBJECT 1		1,502,453	1,561,457	710,630	653,418	1,417,543	2,560,574	3,068,545	1,013,559	9,424,261	1,866,561	1,702,836	6,224,890	2,726,542	12,520,829	25,008,920
OBJECT 2																
OVERTIME MEALS	2102	52	0	0	0	0	0	0	0	0	0	2,155	7,300	2,900	12,435	12,487
PHONE	2125	45,000	14,484	58,481	0	19,431	0	22,060	15,570	115,462	0	0	55,000	20,000	75,000	249,346
	2145	1,200	2,875	539	2,883	3,232	4,984	3,521	1,038	16,117	0	0	59,000	170,794	229,734	249,386
HOUSEHOLD EXPENSE	2161	0	830	0	0	0	0	0	0	0	0	0	15,900	23,020	38,920	39,750
INSURANCE	2171	191,900	0	0	0	0	0	0	0	0	0	0	65,600	23,190	94,790	286,770
MAINT. EQUIPMENT	2211	8,250	9,716	1,577	725	2,155	2,785	1,650	3,218	12,170	0	0	5,300	4,620	9,920	40,056
MAINT. STRUCTURES	2225	0	3,114	0	0	0	0	0	0	0	0	0	22,500	20,000	42,500	45,614
MED. LAB. SUPPLIES	2251	0	0	463,337	0	0	0	0	0	463,337	0	0	0	0	0	463,337
OFFICE EXPENSE	2301	9,861	15,104	5,655	4,079	5,926	8,894	6,092	5,917	37,363	0	4,633	19,500	14,200	38,333	100,661
PROFESSIONAL SERV.	2322	300,330	16,588	96,268	0	3,351	1,068	16,727	93,400	211,694	37,910	54,481	104,200	74,000	270,671	799,283
CONTRACTS	2323	244,533	9,053,329	4,625,370	0	0	0	0	0	4,625,370	203,355	0	230,000	0	433,355	14,356,987
DATA PROCESSING	2331	638,164	1,020	10,134	539	1,020	1,000	3,004	1,336	17,201	0	0	66,000	7,000	73,000	730,273
REHAB. SERVICES	2333	0	0	0	0	0	0	0	0	0	779,000	0	909,200	105,903	1,874,103	1,874,103
PUBLICATIONS	2401	0	0	0	0	0	0	0	0	a	0	0	5,900	3,100	9,000	9,000
RENTAL EQUIPMENT	2451	13,754	249	2,000	561	4,310	11,396	6,602	5,294	30,163	0	5,818	10,400	10,000	26,218	78,384
RENTAL STRUCTURES	2471	0	195,964	25,000	77,227	0	20,722	136,629	71,322	330,900	0	4,202	12,000	52,000	68,202	595,066
SMALL TOOLS	2501	7,370	5,171	34,278	2,201	3,173	4,185	1,760	4,152	49,741	0	6,373	22,400	37,900	66,673	120,955
EDUCATION EXPENSE	2547	2,000	1,246	3,077	519	5,229	9,354	5,755	2,188	26,114	0	100	1,300	1,000	2,400	31,768
PRINTING EXPENSE	2556	32,697	13,452	14,506	0	0	0	0	0	14,586	0	366	8,300	9,300	17,966	78,621
SUPPORT OF PERSONS	2700	14,000	5,190	1,877	0	0	0	0	0	1,077	0	0	15,500	20,320	35,820	56,007
TRAVEL EXPENSE	2751	8,500	3,218	6,387	336	1,077	9,251	3,239	1,557	21,047	0	1,400	2,000	3,600	7,000	40,645
MILEAGE EXPENSE	2752	4,723	20,016	11,042	794	3,448	4,285	8,002	5,813	34,904	0	2,155	2,000	2,000	6,955	66,598
COUNTY AUTOS	2756	7,200	11,094	0	9,770	12,187	33,290	11,773	7,266	74,286	0	0	5,600	5,000	10,600	103,100
OVERHEADS	2770	1721,914	0	0	0	0	0	0	0	0	0	0	0	0	0	1,721,914
UTILITIES	2775	92,340	0	0	10,830	20,756	75,407	36,799	0	143,792	0	0	82,582	68,000	150,582	306,722
POSTAGE EXPENSE	2992	7,000	4,000	5,000	0	0	0	0	0	5,000	0	0	0	0	0	16,000
TOTAL OBJECT 2		3,351,276	9,376,668	5,365,240	111,244	85,303	187,421	264,433	218,143	6,231,044	1,020,265	81,691	1,009,002	604,175	3,595,213	22,555,001
OTHER CHARGES	3000	25,162	0	0	0	0	0	0	0	0	0	0	0	0	25,	102
FIXED ASSETS	4000	140,000	0	0	0	0	0	0	0	0	0	0	0	0	0	140,000
RESERVES	6000	420,626	0	0	0	0	0	0	0	0	0	0	0	0	0	420,626
TOTAL EXPENDITURES		5,439,457	10,938,125	6,075,870	764,654	1,502,846	2,747,995	3,333,038	1,231,702	15,656,105	2,886,826	1,784,527	8,033,972	3,410,717	16,116,042	40,149,729

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	CSS SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	NO. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	SO. CO. REGION 4500	CNH SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VALLEY PAVIL. 4580	WALL SUBSYSTEM	ACUTE SUBSYSTEM	TOTAL BUREAU
DETAIL OF CONTRACTS																	
SUBJECT 2329																	
CATHOLIC SOCIAL SERV			597,285	197,294						197,294						0	794,579
COMMUNITY COMPANIONS (S/D)			612,592							0						0	612,592
COMMUNITY COMPANIONS (B/S)			37,593							0						0	37,593
COMM. LIVING EXPERIENCE			648,575							0						0	648,575
GARDNER			127,992	317,853						317,853						0	445,845
MIRAMONTE			722,859							0						0	722,859
THE BRIDGE (S/D)			410,559	439,456						439,456						0	850,015
THE BRIDGE (BLOCK GRANT)				56,837						56,837						0	56,837
PENINSULA CHILD. CENTER			128,668							0						0	128,668
PUBLIC ADMIN./BOARDMAN			1,171,414							0						0	1,171,414
REHABIL. MENTAL HEALTH			1,792,724							0						0	1,792,724
REHIL. M H JAIL DIVERSION			427,000							0						0	427,000
JAIL DIVERSION-UNALLOCATED			55,876							0						0	55,876
IONTA			243,414							0						0	243,414
SUPPL. RATE CONTRACTS																	
ALI BABA			37,536							0						0	37,536
BLOCK'S AFB			75,072							0						0	75,072
YAY'S			11,595							0						0	11,595
YAGE HOUSE AFB			68,996							0						0	68,996
CLAYTON MANOR			15,460							0						0	15,460
KATHERINE LODGE I			89,148							0						0	89,148
MARIU/HEADWAY			189,480							0						0	189,480
NT. VIEW MANOR AFB			11,494							0						0	11,494
ROCK AVE AFB			15,461							0						0	15,461
ST. JOSEPH AFB			37,536							0						0	37,536
ST. LOURDES			14,384							0						0	14,384
SAMARITA			31,200							0						0	31,200
GRACE SCOTT VILLA I, II			31,200							0						0	31,200
AUTUMN HAVEN			35,190							0						0	35,190
UNALLOCATED FUNDS			112,300							0						0	112,300
HOMELESS CONTRACTS																	
COMMUNITY COMPANIONS			369,520							0						0	369,520
URBAN MINISTRY			314,243							0						0	314,243
THE BRIDGE			55,402							0						0	55,402
THE BRIDGE			114,005							0						0	114,005
MENTAL HEALTH ADVOCACY			36,057							0						0	36,057
HOUSING INDEBTED PEOPLE			154,499							0						0	154,499
EMERGENCY HOUSING CONSOR			183,442							0						0	183,442
UNALLOCATED FUNDS			187,420							0						0	187,420
ADULT & CHILD GUIDANCE				551,514						551,514						0	551,514
A. A. C. I.				641,819						641,819						0	641,819
CHAMBERLAINS				348,374						348,374						0	348,374
CHILD HEALTH COUNS. P.A.				176,166						176,166						0	176,166
CHILD HEALTH COUNS. S.J.				173,033						173,033						0	173,033
EASTFIELD CHILD CENTER				1,320,090						1,320,090						0	1,320,090
HOPE REHABIL.				361,787						361,787						0	361,787
SAN JOSE HOSPITAL-CAPI										0	185,945					185,945	185,945
WESTWOOD										0	85,410					85,410	85,410
TAL CITY										0	12,000					12,000	12,000
HOOPER HOMES										0			50,000			50,000	50,000
INFORMATION & REFERRAL				49,696						49,696						0	49,696
PATIENT RIGHTS										0						0	100,274
AB 3454 ADVOCACY										0						0	75,091

24-01-65

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

PROJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	CSS SUBSYSTEM	C M H ADMIN	ADOLE. D Y T X	NO. CO. REGION	WEST VALLEY REGION	SAN JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT & E P S	EAST WALL PAVIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
AB 3454 HEARING OFFICERS		59,568			4433	4440	4450	4480	4500	0	4520	4540	4560	4580	0	59,568
BERONT./RN			63,002							0					0	63,002
ALMADEM COUNSELING CENTER		18,000								0					0	18,000
MISC ADJUSTMENT			(8,872)	251						251			17,000		17,000	8,379
SAN JOSE AMBULANCE										0			163,000		163,000	163,000
TOTAL CONTRACTS		244,933	9,053,329	4,625,370	0	0	0	0	0	4,625,370	203,355	0	230,000	0	433,355	14,356,987
DETAIL OF PROFESSIONALIZED SERVICES SUBJECT 2322																
EMPLOYEE RELATIONS		22,446								0					0	22,446
COUNTY PERSONNEL		100,009								0					0	100,009
AUDITS		46,424								0					0	46,424
ISING REGISTRY		0								0					0	0
CALLING SYSTEM		115,114								0					0	115,114
MEDICAR		0								0					0	0
CABS		0		3,500						3,500			30,000		30,000	33,500
BUS TICKETS		0		1,500						1,500			5,000		5,000	6,500
STUDENT INTERNS		0								0					0	0
CONSULTANTS		4,898		31,625					93,480	125,185			25,000	74,888	99,888	229,883
DRUG EVALUATION		0		0						0					0	0
MOVEMENT DISORDER		0		0						0					0	0
LABORATORY SERVICES		0		54,643						54,643			20,000		20,000	75,443
DEAF INTERPRETOR		0		2,000						2,000			1,500		1,500	3,500
SECURITY GUARD		0						16,727		16,727		0			0	16,727
MISC. EXPENSES		11,359	16,588			3,351	1,868		0	5,219	37,910	54,481	6,900		99,291	132,457
POOLMAN/SHI		0								0					0	0
RESOURCE PROJECT		0								0					0	0
BAY HEALTH CARE		0								0			15,000		15,000	15,000
CAPITAL CITY		0								0					0	0
THE FAMILY PLACE				3,000						3,000					0	3,000
TOTAL PROF/SERVICES		300,330	16,588	96,258	0	3,351	1,868	16,727	93,480	211,694	37,910	54,481	104,200	74,000	270,671	799,283

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	C S S SUBSYSTEM	C M H ADMIN	ADOLESC. DY TX	NO. CO. REGION	WEST VALLEY REGION	SAN JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT & E P S	EAST VAL. PAVIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
		4350	4380	4410	4433	4440	4460	4480	4500		4520	4540	4560	4580		
DETAIL OF RENT OF STRUCTURES																
SUBJECT 2471																
650 SO. BASCOM																
-NEW HERITAGE					77,389					77,389						77,389
-SACS							20,722			20,722						20,722
5671 SANTA TERESA																
-BLOSSOM VALLEY									71,871	71,871						71,871
614 TULLY ROAD																
-JOS. MARVEZ								54,379		54,379						54,379
1875 E. SANTA CLARA STR.																
-DOWNTOWN								82,250		82,250						82,250
-CSS CASE MANAGEMENT			25,807													25,807
816 N. 1ST. STR.																
-CRIM. JUST. ADMIN.												4,282			4,282	4,282
3 MOORPARK AVE																
-CLUB HOUSE			172,966													172,966
VIRGINIA STR																
-TREATMENT TEAM				25,000						25,000						25,000
TRAILERS													12,000	52,000	64,000	64,000
UNITS NOT FUNDED			(2,889)		(82)				(549)	(631)						(3,440)
TOTAL RENT STRUCTURES		0	195,964	25,000	77,227	0	20,722	136,629	71,322	338,900	0	4,282	12,000	52,000	68,282	595,066
DETAIL OF UTILITIES																
SUBJECT 2775																
655S. BASCOM/2220 MOORPARK		92,567														92,567
650 S. BASCOM(N. HERITAGE)					20,607			5,477		26,084						26,084
FATROCKS (FATROCKS)						15,166				15,166						15,166
GRANT AVE. (NO. COUNTY)						8,338				8,338						8,338
EDGERS LANE																
CENTRAL							63,516			63,516						63,516
DON LOWE PAVIL.													82,582		82,582	82,582
CAPRI DR(WEST VALLEY)							12,660			12,660						12,660
MC KEE (EAST VALLEY)								32,830		32,830						32,830
614 TULLY(J. MARVEZ)								7,255		7,255						7,255
EAST VALLEY PAVILLION													68,000		68,000	68,000
ACCOUNTS NOT FUNDED		(219)			(9,777)	(2,740)	(6,246)	(3,286)		(22,057)						(22,276)
TOTAL UTILITIES		92,348	0	0	10,830	20,756	75,407	36,799	0	143,792	0	0	82,582	68,000	150,582	386,722

ATTACHMENT #1

MENTAL HEALTH BUREAU'S APPROVED BUDGET FZSCRL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4358	C S S SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	NO. CO. REGION 4440	WEST VALLEY REGION 4460	SNV JOSE REGION 4480	SO. CO. REGION 4550	C M H SUBSYSTEM 4520	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST WALL PAVIL. SUBSYSTEM 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
OBJECT 1																
PERSON SALARIES	1185	1,112,398	1,175,831	562,982	490,245	1,071,107	1,920,746	2,332,873	747,527	7,125,400	1,112,441	1,117,175	4,118,985	1,647,529	7,988,130	17,401,839
SALARIES W/O BENEFITS	1186	50,000	7,128	1,974	4,744	15,444	30,888	32,076	7,128	4,234	1,188	82,161	1,783	1,188	86,320	235,782
TEMPORARY HELP	1187	8	8	8	8,715	8	4,418	8	8	13,125	399,000	58,106	247,552	158,402	863,078	876,195
RETIREE MEDICAL	1183	9,750	9,500	3,750	4,500	0,000	15,250	18,000	6,500	56,000	5,500	12,000	46,250	22,966	86,716	161,965
OVERTIME	1191	0	0	1,179	0	0	0	0	0	1,179	0	32,038	196,478	125,817	354,333	355,512
PREMIUM PAY	1193	504	3,024	504	4,536	3,528	5,544	17,648	4,536	36,288	79,800	65,411	295,571	188,273	629,055	668,871
SALARY SAVINGS	1194	(43,386)	(43,446)	(14,659)	(19,973)	(42,843)	(78,788)	(96,381)	(33,686)	(285,450)	(57,882)	(56,859)	(190,422)	(85,347)	(389,630)	(761,912)
HEALTH INSURANCE	1196	91,658	89,300	35,258	42,300	75,200	143,358	169,200	61,100	526,400	51,788	183,399	430,169	216,200	801,468	1,508,818
FICA	1197	75,328	81,399	35,907	33,666	70,269	127,769	154,855	53,165	475,631	66,156	86,601	528,316	130,527	619,600	1,251,950
RETIREMENT	1198	172,233	182,499	87,250	76,833	167,168	298,191	363,068	116,928	1,109,262	184,856	185,793	681,428	283,662	1,335,739	2,799,733
WORKERS COMP.	1199	10,907	11,553	5,530	4,935	10,532	18,921	23,040	7,370	78,328	15,594	12,366	46,881	20,358	95,199	187,987
TOTAL BENEFITS		359,864	374,251	167,687	162,034	331,181	603,481	728,175	245,063	2,237,621	323,006	400,159	1,533,044	681,713	2,938,722	5,910,454
TOTAL OBJECT 1		1,479,376	1,516,788	719,561	650,381	1,379,217	2,486,281	3,014,383	970,648	9,220,497	1,858,433	1,698,991	6,195,001	2,717,575	12,470,000	24,686,661
OBJECT 2																
OVERTIME HEALS	2102	52	0	0	8	0	0	0	0	8	0	2,155	7,300	2,980	12,435	12,487
TELEPHONE	2108	45,000	13,484	50,481	0	13,431	0	22,060	1-5578	115,402	0	8	55,000	20,000	75,000	248,946
	2145	1,200	2,075	539	2,883	3,232	4,984	3,521	1,838	16,117	0	8	59,000	170,794	229,794	249,986
TRAVEL EXPENSE	2161	0	830	0	8	0	0	0	8	0	8	8	15,900	23,028	38,928	39,754
INSURANCE	2171	191,988	0	0	8	0	0	0	8	8	8	0	117,600	47,600	165,200	357,180
MAINT. EQUIPMENT	2211	8,250	3,716	1,577	785	2,155	2,785	1,650	3,218	12,178	0	0	5,300	4,628	9,928	40,856
MAINT. STRUCTURES	2225	0	3,114	0	8	0	0	0	0	8	8	8	22,500	20,000	42,500	45,614
MED. LAB. SUPPLIES	2251	a	0	463,337	8	8	0	6,092	5,917	434,363	0	8	0	8	8	463,337
OFFICE EXPENSE	2301	9,861	14,184	2,655	4,879	5,926	8,894	0	0	0	4,633	19,500	14,200	35,333	96,661	96,661
PROFESSIONAL SERV.	2322	325,432	18,588	61,643	8	3,351	1,868	16,727	93,480	in, 069	37,910	54,481	104,200	74,080	278,671	783,768
CONTRACTS	2329	244,933	8,679,714	4,426,298	0	0	0	e	e	4,426,298	175,945	0	239,000	0	414,945	13,765,890
DATA PROCESSING	2331	633,164	1,828	18,134	539	1,028	1,000	3,004	1,336	17,281	0	8	66,800	7,000	73,888	725,273
REHAB. SERVICES	2333	0	8	8	0	0	0	0	0	0	779,000	8	989,200	105,903	1,874,103	1,874,103
PUBLICATIONS	2481	0	8	0	a	8	0	0	0	0	0	0	5,900	3,100	9,000	9,000
RENTAL EQUIPMENT	2451	13,754	249	2,000	561	4,310	11,396	6,682	5,294	38,163	8	5,818	10,400	10,000	26,218	70,384
RENTAL STRUCTURES	2471	0	195,964	25,000	77,227	0	20,722	136,629	71,322	330,900	8	4,202	12,000	0	16,202	543,066
SMALL TOOLS	2501	7,370	4,671	12,477	2,281	3,173	4,185	1,768	4,152	27,948	0	6,373	22,400	37,986	66,673	106,662
EDUCATION EXPENSE	2547	2,000	1,246	3,077	519	5,229	9,354	5,755	2,180	26,114	e	100	1,300	1,000	2,400	31,768
ITING EXPENSE	2556	32,697	13,452	14,566	0	8	0	0	0	14,586	0	366	8,300	9,300	17,966	78,621
IMPORT OF PERSONS	2700	14,000	5,190	1,077	8	8	0	0	0	1,077	0	0	15,500	20,320	35,820	56,887
TRAVEL EXPENSE	2751	8,500	3,218	6,357	336	1,077	9,251	3,239	1,557	21,847	0	1,400	2,000	3,600	7,888	40,645
MILEAGE EXPENSE	2732	4,723	10,016	8,842	794	3,448	4,205	8,802	5,813	31,904	0	2,155	2,000	2,000	6,955	61,598
COUNTY AUTOS	2756	7,200	11,094	0	3,770	12,187	33,290	11,773	7,266	74,286	0	8	5,600	5,000	18,608	103,180
OVERHEADS	2770	1,721,914	8	0	0	8	0	0	8	0	8	8	0	0	0	1,721,914
UTILITIES	2775	92,567	8	8	10,830	20,756	75,407	36,799	8	143,792	8	8	82,582	68,000	150,582	386,722
POSTAGE EXPENSE	2992	7,000	3,500	5,000	8	0	0	0	0	5,000	0	8	0	0	8	16,300
TOTAL OBJECT 2		3,371,597	8,992,853	5,183,750	111,244	85,383	107,421	264,493	218,143	5,970,354	992,855	81,691	1,870,082	650,585	3,595,213	21,928,998
FIXED ASSETS	4000	0	8	8	0	8	8	0	8	8	8	8	8	8	8	8
RESERVES	6000	746,999	0	8	8	8	8	8	0	0	8	8	8	8	8	746,999
EXPENDITURES		5,597,972	10,508,841	5,823,417	761,545	1,464,520	2,673,782	3,278,876	1,188,791	15,190,851	2,851,288	1,780,682	8,065,083	3,360,160	16,065,213	47,362,658

EXHIBIT "D-2"

24-Oct-85

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C M H ADMIN 4418	ADOLE. DY TX 4433	N.O. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	S.O. CO. REGION 4500	C M H SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VAL. PAVIL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
IDENTIFIED REVENUES																
PATIENT FEES	9714	0	2,000	0	15,777	52,600	99,306	39,000	50,486	257,169	0	0	87,000	0	87,000	346,169
PATIENT INSURANCE	9715	0	0	0	38,826	101,700	177,330	66,000	100,143	483,999	0	0	341,000	0	341,000	824,999
MEDICARE	9498	25,700	0	0	0	49,200	78,691	205,300	50,187	383,378	0	0	1,395,000	0	1,395,000	1,804,078
FED. MEDI-CAL (FED ONLY)	9481	0	47,540	1,222,662	55,500	166,100	206,745	750,531	94,685	2,496,143	0	0	2,177,000	0	2,177,000	4,720,683
SHORT-BOYLE CATEGORICAL																
-HOMELESS ROLLOVER	9343	0	489,000	0	0	0	0	0	0	0	0	0	0	0	0	489,000
-HOMELESS CURRENT	9343	0	803,810	0	0	0	0	0	0	0	0	0	0	0	0	803,810
-SUPPL RATES ROLLOVER	9343	0	179,590	0	0	0	0	0	0	0	0	0	0	0	0	179,590
-SUPPL RATES CURRENT	9343	0	575,051	0	0	0	0	0	0	0	0	0	0	0	0	575,051
-JAIL DIVERSION	9343	0	434,588	0	0	0	0	0	0	0	0	0	0	0	0	434,588
RATES	9343	222,299	0	0	0	0	0	0	0	0	0	0	0	0	0	222,299
OTHER REVENUES																
ATE MANDATED COST	9483	139,868	8	0	8	8	0	8	8	8	8	0	8	8	8	139,000
990 FUNDS	9419	8	8	8	8	0	8	8	0	0	8	133,387	8	0	133,387	133,387
-BLOCK GRANT	9514	8	37,593	56,837	8	8	0	0	8	56,837	8	e	8	8	8	94,430
-AB3632	9716	5,000	e	122,116	8	30,658	30,658	30,658	0	214,998	8	8	0	e	8	219,090
FEE FOR SERVICE M/C																
-PHARMACY		8	8	125,000	8	0	0	8	0	125,000	8	e	8	8	8	125,000
AL INCOME	9716	e	8	8	0	8	0	8	8	8	8	0	8	3,198,300	3,198,300	3,198,300
INTRA-CO FROM DRUG ABUSE	9716	4,893	8	8	8	8	0	8	8	8	8	8	e	8	8	4,693
LOAN FOR PHARMACY	9810	140,000	8	8	0	0	8	0	8	8	8	8	8	8	e	140,000
AB 1733	9459	8	0	0	8	8	8	8	25,000	25,000	8	8	8	8	8	25,000
VALLEY HLTH PLAN	9719	8	8	0	0	8	23,178	0	8	23,178	8	8	8	8	8	23,178
TOTAL IDENT. REVENUE		<u>536,892</u>	<u>2,569,172</u>	<u>1,526,615</u>	<u>120,113</u>	<u>400,258</u>	<u>615,900</u>	<u>1,091,489</u>	<u>320,421</u>	<u>4,074,796</u>	<u>0</u>	<u>133,387</u>	<u>4,000,000</u>	<u>3,198,300</u>	<u>7,331,687</u>	<u>14,512,467</u>
NET		<u>4,902,565</u>	<u>8,368,953</u>	<u>4,549,255</u>	<u>644,541</u>	<u>1,102,588</u>	<u>2,132,095</u>	<u>2,241,549</u>	<u>911,261</u>	<u>11,581,309</u>	<u>2,886,826</u>	<u>1,651,220</u>	<u>4,033,972</u>	<u>212,417</u>	<u>8,784,435</u>	<u>33,637,262</u>

REPORT BY THE
' AUDITOR GENERAL
OF CALIFORNIA

A REVIEW OF THE COSTS OF PROVIDING
NONEDUCATIONAL SERVICES
TO SPECIAL EDUCATION STUDENTS

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SACRAMENTO, CA 95814

Thomas W. Hayes
Auditor General

April 29, 1987

P- 640

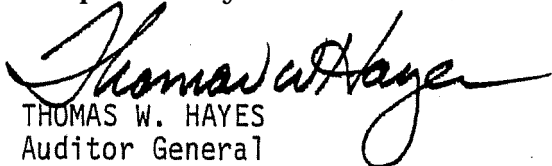
Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, ROOM 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the costs of providing noneducational services to special education students.

We conducted this audit to comply with Item 6100-161-001 of the 1986 Budget Act.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-640

A REVIEW OF THE COSTS OF
PROVIDING NONEDUCATIONAL SERVICES
TO SPECIAL EDUCATION STUDENTS

APRIL 1987

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SUMMARY

RESULTS IN BRIEF

The State Department of Education (SDE) received and reported inaccurate data on the costs of providing noneducational services (related services provided by noneducational agencies) to special education students for fiscal year 1985-86. Although the SDE obtained input from representatives from the departments of Finance and Mental Health and the Legislative Analyst's Office in developing a report form for the special education local plan areas (SELPAs) to use in reporting their costs, the instructions on the types of services that the SELPAs should have reported were not clear. As a result, the SELPAs were not consistent in the data they reported, and they did not correctly compile data. Therefore, we cannot determine if the costs that the SDE reported to the Legislature were understated or overstated.

From March 1, 1986, through December 31, 1986, the number of students referred for noneducational services has more than doubled. As a result, according to officials of the local mental health programs, the local mental health offices had exceeded their funding allocations to provide noneducational services to special education students during the first six months of fiscal year 1986-87. Consequently, according to these officials, they are using Short-Doyle funds to continue to provide services to these students.

BACKGROUND

Before July 1, 1986, the SDE, through the school districts and county offices of education, was solely responsible for the education and care of special education students. However, Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, shifted the responsibility of providing psychotherapy and other mental health services

to the Department of Mental Health (DMH) and shifted the responsibility of providing residential care for seriously emotionally disturbed students to the Department of Social Services (DSS). The SDE retains the responsibility for meeting the educational needs of the students. To facilitate this shift in responsibilities, the Budget Act of 1986 provided for the transfer of \$8.1 million of special education funds. The DMH received \$2.7 million, and the DSS received \$5.4 million. In addition, the Budget Act of 1986 allocated \$2 million to the DMH to determine if special education students need noneducational services.

PRINCIPAL FINDINGS

The State Department of Education Received and Reported Inaccurate Data About Funding for Noneducational Services for Special Education Students

Although the SDE obtained input from the departments of Finance and Mental Health and the Legislative Analyst's Office in developing a report form for the SELPAs to use in reporting the costs of providing noneducational services to special education students, the instructions on the types of mental health services the SELPAs should have reported were not clear. As a result, the SELPAs did not all use the same procedures to report cost data. Furthermore, the school districts within the SELPAs did not correctly compile the cost data they reported. For example, 15 school districts in our sample that paid for counseling costs provided by nonpublic schools reported these costs to the SDE. However, the Los Angeles Unified School District did not report the amounts it paid to nonpublic schools for providing counseling services. In addition, officials at six of the ten largest school districts in the State stated that they did not report counseling costs because not all nonpublic schools in these districts separated the costs for counseling special education students from the total cost of educating these students.

Because of these inconsistencies, the SDE reported inaccurate data to the Legislature on the costs of providing noneducational services to special education students for fiscal year 1985-86. Because the cost information is inaccurate, we cannot determine if the amount reported was understated or overstated.

The Number of Special Education Students
Referred for Noneducational Services
Has Increased Since March 1, 1986

From March 1, 1986, through December 31, 1986, the number of special education students referred for noneducational services has more than doubled. For example, the San Mateo County SELPA reported to the SDE that it provided noneducational services to 166 students for fiscal year 1985-86. However, since March 1, 1986, the San Mateo County SELPA has referred 547 special education students to the local mental health programs for assessment to determine whether they need noneducational services.

Officials at five of the local mental health programs in our sample stated that during the first six months of fiscal year 1986-87, they had exceeded their funding allocations and are using Short-Doyle funds to continue to provide services. Short-Doyle funds are used for inpatient hospital, outpatient hospital and clinical services.

From July 1, 1986, through December 31, 1986, an estimated 13 students in the ten counties in our sample have been placed in residential facilities. However, it takes at least four months to identify students needing placement, to assess the students' needs, and to eventually locate a proper facility in which to place the students. Because the process to place students takes so long, the actual costs the DSS may incur to provide residential services cannot yet be determined.

RECOMMENDATION

The State Department of Education and the Department of Mental Health should work together to develop instructions identifying the types of services that the SELPAs should include in reporting their costs of providing noneducational services to special education students. Specifically, the instructions should provide sufficient information so the SELPAs can determine what types of counseling should be reported as related noneducational costs. Once the instructions are developed, the SDE should require the SELPAs to resubmit their noneducational cost data for fiscal year 1985-86. Before the data is compiled, the SDE and the DMH should provide the training necessary to ensure that the SELPAs use consistent procedures to compile the appropriate noneducational cost data.

AGENCY COMMENTS

The State Department of Education and the Department of Mental Health concur with the Auditor General's recommendation. They both agree that the two departments should work together to identify the types of mental health services that the SELPAs should include in reporting the costs of providing noneducational services to special education students.

INTRODUCTION

California's special education programs provide instruction and services to individuals with exceptional needs. These include students with a communications handicap such as deafness, students with a physical handicap such as blindness, and students with severe handicaps such as mental retardation or emotional disturbances'. In April 1986, when the last available count' was made, approximately 393,000 students were served by special education programs in public schools.

Section 56000 of the Education Code requires that students in California public schools receive special education and related services through the Master Plan for Special Education. Under the master plan, special education local plan areas (SELPAs), which consist of school districts and county offices of education, are responsible for developing and implementing a plan to provide an appropriate education for individuals with special needs.

In addition, Sections 56340 and 56341 of the Education Code require each school district to establish individualized education program (IEP) teams to develop, review, and revise education programs for each student with exceptional needs. These teams are to include a qualified special education teacher, the student's classroom teacher, and one or both of the student's parents. The IEP teams may require that mental health or residential treatment services, hereafter

referred to as noneducational services, be provided to support the student's special educational needs. When the IEP team determines that a student may need noneducational services, the team may refer the student to a local mentalhealth program for assessment. After the assessment, the team may recommend that seriously emotionally disturbed students be placed in residential care facilities. Section 56345 of the Education Code requires school districts or county offices of education to provide the services that are recommended in the student's individualized education program.

Before July 1, 1986, the State Department of Education (SDE), through the school districts and county offices of education, was solely responsible for providing special education services, as well as mental health and residential care services, for special education students. However, Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, shifted the responsibility of providing psychotherapy and other mental health services to the Department of Mental Health (DMH) and shifted the responsibility of providing residential care for seriously emotionally disturbed students to the Department of Social Services (DSS). The SDE retains the responsibility for ensuring that the educational needs of the students are met.

To facilitate the shift in responsibilities, the Budget Act of 1986 provided for the transfer of \$8.1 million in special- education funds for fiscal year 1986-87 from the SDE to the DMH and the DSS. The DMH received \$2.7 million, and the DSS received \$5.4 million. The

Budget Act of 1986 also appropriated an additional \$2 million to the DMH to provide noneducational services. Finally, the Budget Act of 1986 required the SDE to identify the number of special education students receiving noneducational services and the costs for providing these services during fiscal year 1985-86.

In December 1986, the SDE received and reported information from the local education agencies that, in fiscal year 1985-86, these agencies provided psychotherapy and other mental health services to 941 students and residential services to 225 students. The reported costs for providing psychotherapy and other mental health services were approximately \$1.7 million, and the reported costs for providing residential services were approximately \$1 million.

SCOPE AND METHODOLOGY

The purpose of this review was to verify the costs reported by the SDE for providing noneducational services to special education students during fiscal year 1985-86 and to determine whether the funds transferred to the DMH and the DSS exceeded their actual expenditures. We conducted this audit to comply with the Budget Act of 1986.

Because the cost information reported by the SDE is inaccurate, we could not determine whether the amount of funds transferred to the DMH and the DSS are sufficient to meet the noneducational needs of the special education students. However, we

analyzed the costs reported by the SDE by selecting a sample of eight special education local plan areas (SELPAs) and reviewing their methodologies for compiling and reporting data on the costs of noneducational services. In addition, we interviewed administrators of the SELPAs and special education staff at most of the school districts.

We reviewed the cost data reported by 37 school districts in the following eight SELPAs:

Tri-County Consortium (Amador, Calaveras, Tuolumne)
Contra Costa County
Fresno Unified School District
Los Angeles Unified School District
Riverside County Office of Education
San Juan Unified School District
San Mateo County Schools
Santa Clara County (Area I)*

Our site visits included three of the ten largest school districts in the State: the Fresno Unified School District, the Los Angeles Unified School District, and the San Juan Unified School District. In addition, we contacted, by telephone, staff of the remaining seven largest school districts to determine their methodologies for compiling and reporting cost data.

To determine the process for providing noneducational services to special education students and how the costs of these services were

*Santa Clara County has seven SELPAs.

reported, we interviewed officials from the SDE's Special Education Division, the DMH's Special Populations Branch, and the DSS's Foster Care Program Management Bureau.

To determine the number of students who have been identified as needing noneducational services and the costs incurred for these services, we obtained documentation and interviewed officials of the local mental health offices located in each of the eight SELPAs.

Finally, we presented the results of the audit to representatives from the Department of Social Services and to each of the five SELPAs specifically mentioned in the report. We took the concerns of these agencies into consideration in the audit report.

AUDIT RESULTS

I

THE STATE DEPARTMENT OF EDUCATION RECEIVED AND REPORTED INACCURATE DATA ABOUT FUNDING FOR NONEDUCATIONAL SERVICES FOR SPECIAL EDUCATION STUDENTS

The State Department of Education (SDE), with input from the departments of Finance and Mental Health and the Legislative Analyst's Office, developed a report form for the special education local plan areas (SELPAs) to use in reporting the costs of providing noneducational services to special education students. However, the instructions provided to the SELPAs to use in collecting and compiling these costs were not clear and did not identify the specific types of counseling that should be reported as related noneducational costs. As a result, the SELPAs were not consistent in the way they reported this cost data. Therefore, we cannot determine if the actual amount of funds that the SDE reported for providing noneducational services was understated or overstated.

The Budget Act of 1986 required the SDE to report its total costs for providing noneducational services to special education students during fiscal year 1985-86. In addition, the Budget Act of 1986 required the SDE to develop a standard methodology for the SELPAs to use in identifying their costs of providing these services. This information was required to determine if the amount of funds transferred from the SDE to the Department of Mental Health (DMH) and

the Department of Social Services' (DSS) exceeded the actual expenditures of the local education agencies for providing mental health and residential services.

In developing its report form to compile the costs of providing noneducational services to special education students, the SDE requested that the Department of Finance and the Legislative Analyst's Office review the report form. Even though the SDE obtained signatures from the representatives of these agencies indicating that they had reviewed the form, the representatives stated that they did not have sufficient knowledge of the specific types of mental health services that should be reported as noneducational costs. According to the deputy superintendent for specialized programs, the SDE believed that these signatures constituted approval of the report form. In addition, the SDE asked the DMH to provide a definition of "other mental health services" that would be included in the report form.

The School Districts Are Inconsistently Reporting Costs of Providing Noneducational Services

The 37 school districts within the eight SELPAs we reviewed were not consistent in the costs they reported for providing noneducational services to special education students. Furthermore, the school districts did not all, use the same criteria and did not always correctly compile the cost data they reported.

For example, not all of the school districts reported the costs of counseling services provided by nonpublic schools.* Fifteen school districts in our sample paid for the counseling services provided to special education students by nonpublic schools or nonpublic agencies and included those costs in their reports to the SDE.** The Los Angeles Unified School District, however, did not report the costs it paid to nonpublic schools for providing an estimated 1,400 special education students with counseling services. Furthermore, the Los Angeles Unified School District did not report the costs it paid to residential facilities for providing counseling services to 17 students residing at those facilities. The Coordinator of Pupil Services in the Los Angeles Unified School District stated that these costs were not reported to the SDE because the costs were for counseling services only and did not include psychotherapy.

In addition, two school districts within the same SELPA reported the costs, for counseling special education students differently. The Pittsburg Unified School District in the Contra Costa County SELPA did not report the costs paid to nonpublic schools for counseling special education students because the nonpublic schools did not separate counseling costs from the total cost of educating students. The Acalanes School District, in the same SELPA, also paid

*Nonpublic schools include private, nonsectarian schools that serve students with exceptional needs.

**Nonpublic agencies include any private, nonsectarian agency or individual that serves students with exceptional needs,

for the counseling services provided by nonpublic schools but estimated the costs it paid and reported those costs to the SDE as noneducational services,

In addition to reviewing the data reported by the school districts in our sample, we interviewed special education officials of the ten largest school districts in the State to determine if these districts reported costs for the counseling services provided by nonpublic schools. Officials at six of these schools stated that they did not report these costs because not all nonpublic schools in their districts separated the costs for counseling special education students from the total cost of educating these students. Officials at another school district stated that they did not report the counseling costs because they believed that only psychotherapy, not counseling, should be reported. Officials at another school district stated that they did not report the costs for students receiving counseling in nonpublic schools because not all the nonpublic schools separated these costs. Furthermore, when the nonpublic schools did separate the counseling costs, the district did not report these costs because they were for counseling, not psychotherapy. The officials at another school district estimated the costs paid to nonpublic schools for providing counseling, and officials at the remaining school district did not report any costs for counseling or other mental health services because psychologists on the district's staff provided these services.

Two school districts in the Santa Clara County (Area I) SELPA were also inconsistent in reporting the costs of providing noneducational services to special' education students. A district representative stated that the Palo Alto Unified School District did not report the costs it incurred for special education students enrolled in a "therapeutic activity group" because the local mental health office did not consider this activity to be a mental health service. However, the Whisman School District, in the same SELPA, reported its costs for the students enrolled in a similar therapeutic activity group.

School Districts Are Not Consistent
in Their Procedures for Compiling
the Costs of Noneducational Services

In addition to differences in the costs they report of providing noneducational services to special education students, the school districts used different procedures to compile their costs. For example, the Redwood City Elementary School District in the San Mateo County SELPA reported the estimated cost of \$30,375 shown on its contracts with nonpublic schools for the services these schools were to provide to special education students. However, the actual cost the school district incurred during fiscal year 1985-86 for providing noneducational services was \$23,505, or \$6,869 less than the amounts shown on the contracts. In contrast, 35 of the other 36 school districts in our sample reported the actual costs for noneducational services, as reflected in their monthly invoices. The remaining school district reported its costs by using both invoices and contracts.

Finally, eight school districts in our sample incorrectly calculated or compiled the cost data they reported, to the SDE. Six of the eight school districts made minimal mathematical errors in their cost data, and four of the school districts excluded costs that should have been included in their data. For example, the San Mateo Union High School in the San Mateo County SELPA incorrectly omitted invoices for counseling costs totaling \$5,367.50. Similarly, the Whisman Unified School District in the Santa Clara County (Area I) SELPA omitted from its data \$2,173.75 for counseling and \$460 for assessing the mental health needs of special education students. Conversely, four school districts included costs in their reports that should not have been included. For example, the San Mateo City School District incorrectly reported \$1,085 in mental health costs that it had incurred in the previous fiscal year. Similarly, the Palo Alto Unified School District incorrectly reported \$160 in counseling costs it had incurred in the previous fiscal year.

Because of the reporting inconsistencies noted above, the SDE reported to the Legislature inaccurate data on the costs of providing noneducational services to special education students for fiscal year 1985-86. Therefore, we cannot respond to the requirement of the Budget Act of 1986 that the Auditor General's Office determine whether the amount of funds transferred to the DMH and the DSS are sufficient to meet the noneducational needs of the special education students,

Administrators in seven of the eight SELPAs in our sample told us that the instructions provided by the SDE were not specific and, therefore,, they were not certain which services were to be reported as noneducational costs. Based upon our review, we conclude that the instructions accompanying the form did not clearly identify the types of mental health counseling that should have been reported. In addition, the administrators said that the SDE provided little training or direction on how to complete the report form. However, an SDE consultant stated that the SDE did provide some instruction on report preparation at the monthly meetings of SELPA directors, but not all SELPA directors attended these meetings. Furthermore, the assistant director of the Special Education Division told us that SDE consultants were available to respond to questions from SELPA administrators concerning the report form.

Finally, the SDE did not test the report form, which is used for collecting noneducational costs, at any of the SELPAs before the report form was distributed to all of the SELPAs. By testing the form, the SELPAs may have identified potential problem areas and the SDE could have corrected the form accordingly.

CONCLUSION

The State Department of Education received and reported inaccurate data on the costs of providing noneducational services to special education students during fiscal year

1985-86. Although the SDE, with input from the departments of Finance and Mental Health and the Legislative Analyst's Office, developed a report form for the special education local plan areas (SELPAs) to use in submitting their data on noneducational costs, the instructions provided to the SELPAs were not clear. As a result, the eight SELPAs we reviewed differed in the cost data they reported and used different procedures to compile their data. In addition, the SELPAs made errors in compiling their data.

RECOMMENDATION

To ensure consistency in the way the SELPAs report costs for noneducational services to special education students, the SDE and the DMH should take the following actions:

Develop instructions identifying the types of services that the SELPAs should include in reporting the costs of providing noneducational services to special education students. The instructions should provide sufficient information so the SELPAs can determine what types of counseling should be reported to the SDE as related noneducational costs; and

Provide additional training and direction to SELPA directors to ensure that they use consistent procedures to compile the noneducational costs before the data is reported.

Once the agencies have agreed on the types of counseling services that should be reported, the SDE should take the following actions:

Test the revised report form at a sample of SELPAs before distributing the form to all of the SELPAs; and

Require the SELPAs to resubmit their data on noneducational costs for fiscal year 1985-86.

THE NUMBER OF SPECIAL EDUCATION STUDENTS
REFERRED FOR NONEDUCATIONAL SERVICES
HAS INCREASED SINCE MARCH 1, 1986

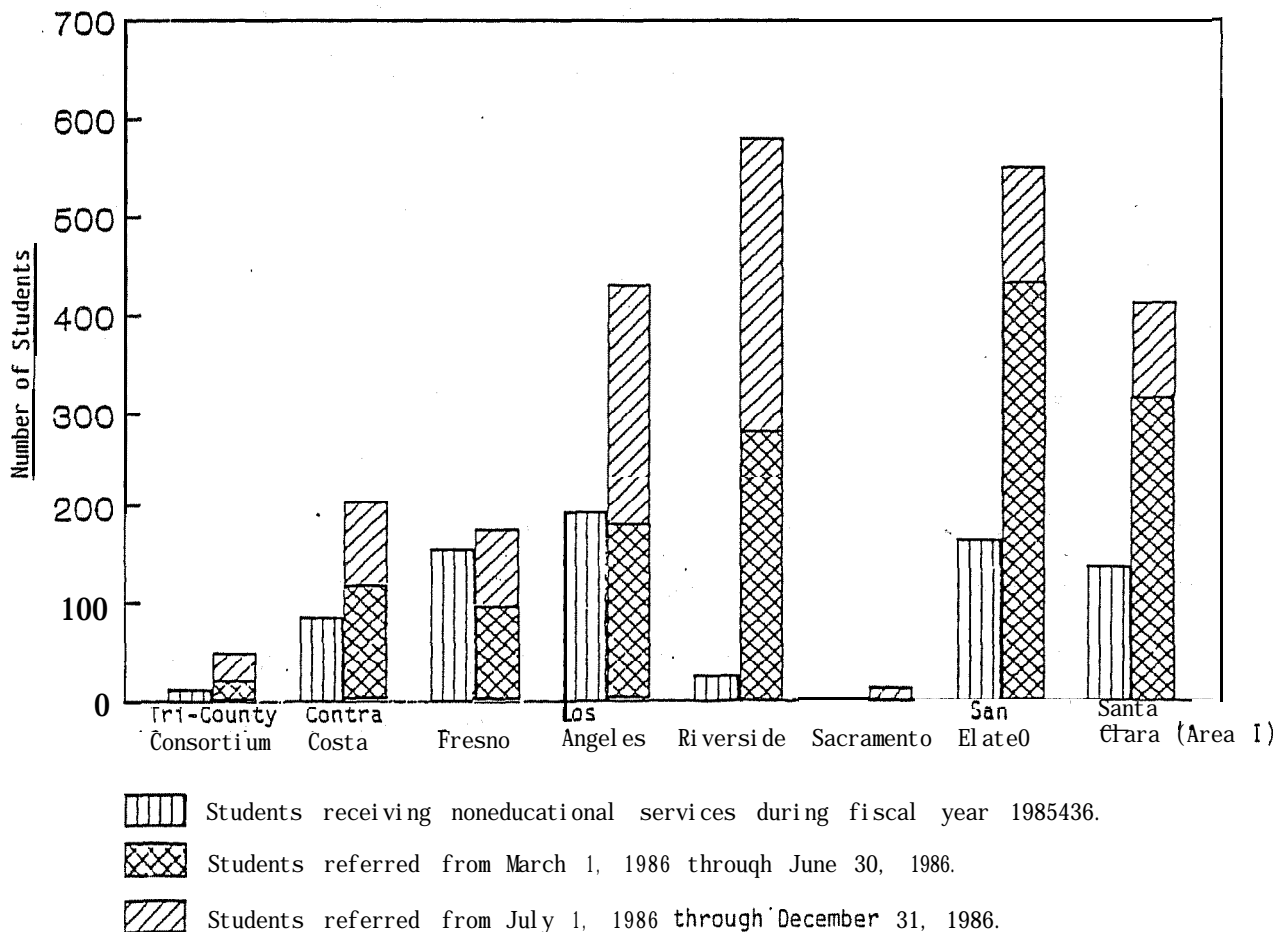
Since the SDE reported, the number of students receiving noneducational services and the costs of providing those services for fiscal year 1985-86, the number of students identified by Individualized Education Program (IEP) teams as needing noneducational services has increased.

From March 1, 1986, through December 31, 1986, the number of students referred for noneducational services is more than twice the number of special education students who received services during fiscal year 1985-86. Legislation enabled the DMH to participate on IEP teams from March 1, 1986, through June 30, 1986, and to assess special education students' needs for noneducational services. In addition, legislation implemented on July 1, 1986, requires the Department of Mental Health to assess special education students' needs for noneducational services and to provide these services to the students. Figure 1 shows that from March 1, 1986, through December 31, 1986, the number of students referred for assessment to the ten local mental health programs in our sample was significantly higher than the number of students reported as being served during fiscal year 1985-86. For example, the San Mateo County SELPA reported to the SDE that, during fiscal, year 1985-86, it provided noneducational services to 166

students. However, from March 1, 1986, through June 30, 1986, the IEP teams in the San Mateo County SELPA referred 428 special education students to the local mental health program for assessment. Further, during the first six months of fiscal year 1986-87, the IEP teams in the San Mateo County SELPA referred an additional 119 students to the local mental health programs to determine if they require noneducational services.

FIGURE 1

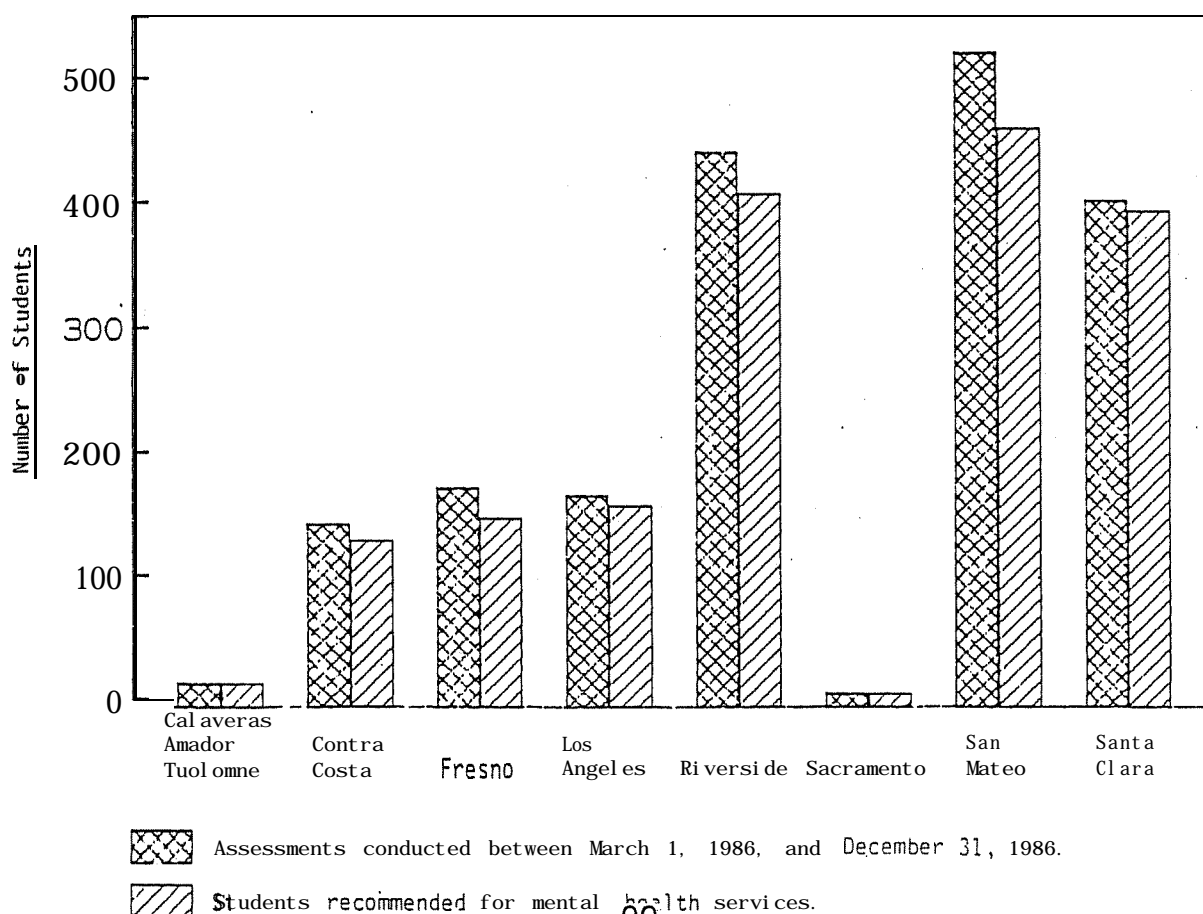
STUDENTS RECEIVING NONEDUCATIONAL SERVICES
DURING FISCAL YEAR 1985-86 AND
STUDENTS REFERRED FOR MENTAL HEALTH SERVICES
FROM MARCH 1, 1986 THROUGH DECEMBER 31, 1986



Our review indicates that not only are the IEP teams within the SELPAs referring more students for mental health assessment but also that the local mental health programs are recommending that the majority of the students referred need noneducational services. For example, the Santa Clara County mental health program received 409 referrals from March 1, 1986, through December 31, 1986. The Santa Clara County mental health program recommended noneducational services for 397 (97 percent) of these students. Figure 2 shows the number of students referred that the local mental health programs have then recommended for noneducational services.

FIGURE 2

STUDENTS ASSESSED AND RECOMMENDED FOR
MENTAL HEALTH SERVICES IN TEN COUNTIES
MARCH 1, 1986 THROUGH DECEMBER 31, 1986



Funding of Mental Health Services

Based on our discussions with officials at the local mental health programs in our sample, the funds transferred to the DMH from the SDE are not sufficient to meet the needs of students identified as needing noneducational services. The Budget Act of 1986 provided for the transfer of \$2.7 million in special education funds from the SDE to the DMH for assessing and treating special education students. In addition, the DMH received an additional \$2 million to provide noneducational services to special education students.

The DMH allocated the \$4.7 million it received to the county mental health programs throughout the State. Officials at five local mental health programs in our sample stated that they had exceeded their funding allocations during the first six months of fiscal year 1986-87. As a result, these officials stated that they are using Short-Doyle funds to provide noneducational services to special education students. These funds can be used for other county mental health services including inpatient hospital, outpatient hospital, and clinical services.

Furthermore, some students identified as needing noneducational services are placed on waiting lists because the resources to provide the services are not available. For example, during the first six months of fiscal year 1986-87, the manager of children's mental health services in Riverside County stated that the

local mental health program spent approximately \$207,000 to provide psychotherapy and other mental health services to special education students. However, this office received only \$179,370 from the DMH to provide these services. Furthermore, this manager stated that the local mental health program has had to use Short-Doyle funds to continue to provide the services needed by these special education students. In addition, the Riverside County mental health program placed 61 students on waiting lists because the resources to provide the services were not available.

Funding for Residential Services

Special education students who are classified as seriously emotionally disturbed may require a residential facility placement funded by the DSS. The Department of Finance transferred \$5.4 million of special education funds to the DSS to provide needed residential services to special education students. However, during the first six months of fiscal year 1986-87, an estimated 80 students were placed in residential facilities throughout the State, and, as of December 31, 1986, the DSS has paid approximately \$673,000 to provide residential services for these students. In contrast, the SDE reported that it paid approximately \$1 million to provide residential services to 225 students during fiscal year 1985-86.

The ten counties in our sample have placed an estimated 13 students in residential facilities during the first six months of

fiscal year 1986-87. Based on our review, the reason so few students have been placed in residential facilities since the new legislation was implemented on July 1, 1986, is that the placement process is very time-consuming. For example, it takes, at least four months to identify the student needing placement, to assess the students' needs, and to eventually locate a proper facility in which to place the students. In addition, some students who have been identified as requiring residential placement have not been placed because the students may be waiting for an opening at a residential facility that can provide the specific services the students need. For example, one seriously emotionally disturbed student in Sacramento County was identified as requiring residential placement in October 1986; as of March 19, 1987, this student still had not been placed in a residential facility. The program specialist at the San Juan Unified School District stated that a residential facility has been recommended for the student; however, the student cannot be placed in the facility until a bed becomes available. Because the process to place students in a residential facility takes so long, the actual costs the DSS may incur to provide residential services cannot yet be determined.

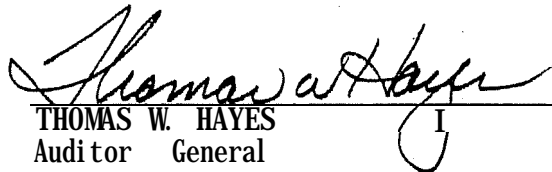
CONCLUSION

Since March 1, 1986, the number of students referred for noneducational services has more than doubled. As a result of the increased number of students needing services, some of the county mental health programs in our sample have exceeded

their funding allocations and are using Short-Doyle funds to continue to provide noneducational services to special education students. The DSS has not exceeded its allocation because only 80 students have been placed in residential facilities during the first six months of fiscal year 1986-87. Because it takes so long to place special education students in these facilities, the actual costs that the DSS may incur cannot yet be determined. '

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report,

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: April 27, 1987

Staff: Robert E. Christophel, Audit Manager
Elaine M. Howle
Mary E. Bensorosky
Keith Kuzmich
James W. Cooper



April 22, 1987

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street Suite 300
Sacramento, CA 95814

RE: P-640

Dear Mr. Hayes:

Thank you for the opportunity to comment on the draft report titled "A Review of the Costs of Providing Noneducational Services to Special Education Students." The study highlights areas where the State Department of Education (SDE) and the Department of Mental Health (DMH) must continue to work together to ensure appropriate and timely services for special education students.

The primary factor in the inconsistency of the cost data reported by the local educational agencies appears to have been the lack of a standardized definition of "other mental health services," specifically the education-related counseling that will now be funded directly by DMH. The need for further guidance in this area is apparent from the example of overreporting of costs described on page 11 of the report. The district that reported the costs for their therapeutic activity group will have those funds transferred to DMH but will still bear the cost of the service as the local mental health office does not consider this to be a mental health service. The variance in the resources available within districts adds to the difficulty of drawing distinct lines between those services that will continue to be provided by the education agencies and those that will now be the responsibility of DMH.

The unavailability of separately identified costs for services provided by most nonpublic schools and agencies further complicated the gathering of consistent data throughout the state. Legislation requiring itemization of costs in contracts with nonpublic schools and agencies may be necessary to rectify the problems in identifying costs for related mental health services provided by these organizations. Unless this issue is resolved, inexact data will necessarily be reported in any future efforts to identify the costs of related noneducational services.

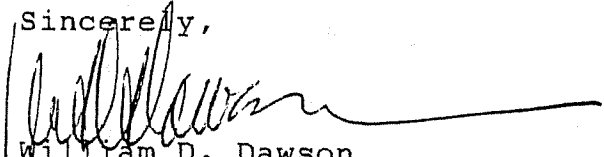
While there were other instances of "clerical" or arithmetic inconsistencies, we found no indications of willful failure to report accurate data.

Thomas W. Hayes
April 22, 1987
Page 2

As noted in the report, staff of SDE and of DMH have discussed the need for a definition of the types of education-related mental health services which will be meaningful to professionals in both fields. We will continue to work together, as recommended, to formulate a definition and will involve staff from the special education local plan areas (SELPAs) in the discussions so that all responsible entities will have a part in the product. If the Legislature requires another report of cost data, we will also involve the SELPAs in testing the form to be used in the data collection efforts.

We are concerned about the reference to the process for students recommended for residential placement taking "at least four months." Federal and state laws require that assessment, development of the Individual Education Program and placement of a child take place within 50 days. This discrepancy between the SDE model and the DMH interpretation of Chapter 26.5 of the Government Code and of Public Law 94-142 needs to be resolved. SDE and DMH staff have provided some inservice to correct the misconceptions in the field and we will continue to work together to ensure timely service to special education students.

Sincerely,



William D. Dawson
Executive Deputy Superintendent

WDD:c



DEPARTMENT OF MENTAL HEALTH
1600 - 9th STREET
SACRAMENTO, CA 96814

(916) 323-8173

April 22, 1987

Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento CA 95014

Dear Mr. Hayes:

Mr. Allenby has asked me to respond to your draft report P-640, "A Review of the Costs of Providing Noneducational Services to Special Education Students,"

The Department of Mental Health finds your report generally accurate. We share your concern that the SELPAs' actual expenditures for noneducational services were not reported in a way which would allow an accurate estimate of the funds which should have been transferred from the Department of Education to the Departments of Mental Health and Social Services. We believe that at the time the report forms were developed, that those entities approving the form believed it to be adequate to elicit the information needed. We will make all necessary resources available to implement the recommendation to refine data collection methodology to assist the educational community to report expenditure data.

I wish to clarify two topics in which the report as drafted may lead to misunderstanding.

1. In the third paragraph of the introduction, the next to last sentence states, "After the assessment, the team may recommend that seriously emotionally disturbed students be placed in residential care facilities."

It is important to emphasize that residential placement is a "last-ditch" alternative to be employed only after all other mental health or educational services, or combinations of the two, have been tried or considered.

In preference to out-of-home placement, for the great majority of pupils referred, the IEP team might recommend individual or group counseling, outpatient therapy, day treatment or some other service or combination. Only if neither the school nor mental health can provide services to enable the child to benefit from instruction may an out-of-home placement be made.

2. In Part II of the draft, under the heading, "Funding of Mental Health Services," the second paragraph concludes

" . . . [County mental health] officials **staced** that they are using Short-Doyle funds to provide noneducational services to special education students. These funds can be used for other county mental health services including inpatient hospital, outpatient hospital, and clinical services,"

This paragraph may lead the reader to conclude that diversion of Short-Doyle funds is not a problem. In fact, county Short-Doyle plans are designed to address the most pressing local mental health needs. After adoption by local boards of supervisors/ the plans are submitted to the State Department of Mental Health for approval. These plans become the counties' blueprints for expenditure of Short-Doyle funds.

Although some of the pupils currently being referred by local education agencies are every bit as needful of mental health services as children and adults presently receiving Short-Doyle services, many others are much less so. Nonetheless, Chapter 1747/84 and Chapter 1274/85 mandate that all special education pupils in need of mental **health services** in order to benefit from instruction must receive them.

Thank you again for the opportunity to respond to the draft report.

Sincerely,


D. MICHAEL O'CONNOR, M.D.
Director

HANDICAPPED AND DISABLED CHILDREN-SPECIAL
EDUCATION AND RELATED SERVICES-IN-
TERAGENCY RESPONSIBILITIES

Assembly Bill No. 3632

CHAPTER 1747

An act to add Chapter 26 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code, and to amend Section 11401 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 30, 1984. Filed with
Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3632, W. Brown. Disabled minors.

Existing law provides for various programs which provide social services, mental health services, and educational services to disabled children.

Existing law also provides that every child has a right to a free appropriate public education.

This bill would provide that it shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare to ensure maximum utilization of all state and federal resources available to provide handicapped children with a free appropriate public education, the provision of related services, as defined, and designated instruction and services, as defined.

The bill would provide that the State Department of Health Services or any designated local public health agency shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

The bill would provide that parents shall not be liable for the costs of therapy treatment services provided by the State Department of Health Services or the State Department of Mental Health, when provided to a child in the public schools, if the services are necessary for the child to benefit from special education.

The bill also provides that the Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program.

The bill provides that the State Department of Health Services shall be responsible for the provision of occupation and physical therapy, and that the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services, if

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these services **are** deemed necessary in a child's individualized educational program.

Existing law provides that the provision of special education **programs and** related services for children residing in state hospitals shall be the joint responsibility of the State Department of Developmental Services and the State Department of Mental Health.

This bill would also make the Superintendent of Public Instruction responsible for providing educational programs and related services to these persons.

The bill would provide that the State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of **Rehabilitation** services for handicapped pupils in secondary schools.

This bill would provide that prior to placing a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional **center**, or public agency other than an educational agency, shall notify the administrator if the special education local plan area, **where the** residential facility is located, to determine if an appropriate educational program is available in the special education local plan area.

The bill would provide for meetings between **a department** or agency and the Superintendent of Public Instruction when a department or a designated local agency does not provide a related service or designated instruction to a child and the service is to be provided pursuant to the child's individualized education program.

The bill would also provide that, whenever a community **care** facility may be used for placement of a handicapped child, the State Department of Social Services shall, prior to licensing, **or modifying** a facility's license in order to permit expansion, consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

The bill would require local agencies to submit to **the** Department of Finance an estimate of any **expenditure** responsibilities which are, or will be, acquired by, or shifted from, the agency due to the foregoing provisions **of** the bill. The Department of Finance would be required to **recommend** in the **annual** Budget Act any adjustments necessary to implement these changes in responsibility, for expenditures.

The bill would require each state agency referred to in the bill to develop, where necessary, regulations implementing the foregoing provisions of the bill. **Each** department would be required to obtain approval of its regulations from the Superintendent of Public Instruction prior to filing them with the Office of Administrative Law.

The bill would provide that its provisions would become operative on July 1, 1985.

Under existing law, a child may be eligible to receive assistance under the county-administered Aid to Families with Dependent

Children Foster Care (AFDC-FC) program if the child has been deprived of parental support or care, and if specified conditions are met.

This bill would create a state-mandated local program by providing that one of these conditions is that the individual must have been placed out of home pursuant to an individualized education program.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would create a state-mandated local program by imposing various requirements upon educational agencies.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2.234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age. The Legislature further finds and declares that California has not maximized, or sufficiently coordinated existing state programs, in providing supportive services which are necessary to assist a handicapped child to benefit from special education.

It is the intent of the Legislature that existing services rendered by state and local government agencies serving handicapped children be maximized and coordinated. It is the further intent of the Legislature that specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children.

SEC. 3. Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 is added to the Government Code, to read:

**CHAPTER 26. INTERAGENCY RESPONSIBILITIES FOR PROVIDING
SERVICES TO HANDICAPPED CHILDREN**

7570. Ensuring maximum utilization of all state and federal resources available to provide handicapped children, as defined in

Ch. 1747

STATUTES OF 1984

subsection (1) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in subsection (17) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to handicapped **children**, shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

7571. The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

7572. (a) A child shall be assessed in all areas related to the suspected handicap by **those** qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child by individuals whose **employment** standards are not covered by the **Education Code**. All assessments required or conducted pursuant to this section shall be **governed** by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and **physical** therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental-Health pursuant to this chapter.

(d) A **related** service or designated **instruction and** service shall only be added to the child's individualized education program by the **individualized** education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet **with** the individualized education program team to determine **the need** for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide

written information concerning the **need** for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and **any** member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include:

- (1) A representative of the county mental health department.
- (2) A representative of the county welfare department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care will enable the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Specification of a lead case manager from among the public agency representatives on the team.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months,

(3) Specific plans for reunification services pursuant to Section 16507.4 of the Welfare and Institutions Code to the parents, so that the child's return home may be appropriately planned for at the earliest time consistent with the child's best interests.

(d) The individualized education program process, with its procedural safeguards and access to appeal procedures, is deemed to meet requirements of an administrative review hearing as called for in Section 475 of the federal Social Security Act (42 U.S.C. Sec. 675), as amended by P.L. 96-272, for purposes of establishing eligibility for faster care maintenance payments.

(e) The superintendent shall enter into an agreement with the Director of the State Department of Social Services which permits

the supervision of placement and care of a child placed out of home pursuant to an individualized education program to be done by the individualized education program team established above. The agreement shall specify how case supervision responsibilities shall be assigned to assure compliance with Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code, P.L. 96-272 and Part 30 (commencing with Section 56000) of Division 4 of the Education Code.

7573. The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

7574. Notwithstanding any other provision of law, the State Department of Health Services, or any designated local public health agencies, shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

7575. (a) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral is within the scope of its statutory responsibilities. A private medical referral shall be based on a written report indicating the disability from a licensed physician and surgeon who has examined the pupil.

(c) When the California Children's Services panel physician disagrees with the private referral, the referral shall be treated by the individualized education program team as an educational recommendation only. The individualized education program team shall have the responsibility to determine if the services recommended are necessary for the pupil to benefit from special education. Upon this determination, and notwithstanding Section 7573, the provision of these services shall be the responsibility of the local educational agency.

(d) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(e) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(f) The department shall also be responsible for providing the services of an aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom the California Medical Assistance Program provides a life-maintaining medical service during the time in which the pupil would be in, s c h o o l . . .

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

7577. (a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be distributed to local education agencies.

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds which may become available.

7578. The provision of special education programs and related services for handicapped children residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Health and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56350) of Part 30 of Division 4 of Title 2 of the Education Code.

7579. (a) Prior to placing a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

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(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of the section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

7580. Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a handicapped child may be placed, or prior to a modification of such a facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

7581. The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

7582. Therapy treatment services provided under programs of the State Department of Health Services or State Department of Mental Health, or their designated local agencies, rendered in the public schools, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered to any handicapped child when the services are necessary for the child to benefit from special education.

7563. Each local agency affected by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1965, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shifts in expenditures caused by this chapter.

(c) Any reductions in state allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

7584. As used in this chapter, "handicapped children", "child," or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification: A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall submit to the Legislature on July 1 of each year a joint report on the written notifications received pursuant to subdivision (a) on the failure of departments or their designated local agencies to provide occupational therapy, physical therapy, or psychotherapy. This joint report shall include, but not be limited to, a description of the nature of these disputes, a summary of the

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outcomes of these disputes, and any recommendations for changes to the procedure set forth in subdivision (a) or with regard to any interagency agreement and regulations **which** might exist as a result of the implementation of this chapter.

(i) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings **which** are required by this section.

75%. (a) All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be **filed** with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process **hearing** shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

(b) Upon receipt of a request for a due process hearing **involving** an agency other **than** an educational **agency**, the Superintendent of Public Instruction shall immediately **notify** the state and local agencies involved by sending a copy of the request to the agencies.

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with **all** responsible state or local agencies joined as parties.

(d) No public agency, state or local, may request a due **process** hearing pursuant to Section 56501 of the Education Code against another public agency.

7587. By July 1, 1985, each **state** department named in this **chapter** shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed and approved by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations **governing** the education of handicapped **children**.

7588. This chapter shall become operative on July 1, 1985, except **Section** 758.3 which shall become operative on January 1, 1985.

SEC. 3. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of **AFDC-FC** shall be provided **under** this chapter on be half of any child under the age of 18, except as provided in **Section** 11403, who meets the conditions of subdivision (a), (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, **provided** that the licensed adoption agency or the department, if responsible for placement and care,

provides to such children all services as required by the department to children in foster care.

(b) The child has been deprived of **parental** support or care due to any of the reasons set out under **Section 11250**, provided:

(1) The child has been removed from the physical custody of his or **her parent** or guardian, and

(A) Has been adjudged a dependent child of the court on the grounds that he or she is a person described by **Section 300**, or

(B) Has been adjudged a ward of the court on the grounds that he or she is a person described by **Sections 601 and 602**, or

(C) Has been detained under a court order pursuant to **Section 320 or 636** which remains in effect; or

(D) Has been placed out of home pursuant to an individualized education program developed under **Section 7572.5** of the **Government Code**.

(2) The child has been voluntarily placed by his or her parent or guardian pursuant to **Section 11401.1** or in a demonstration county, pursuant to **Section 16550**, et seq.; or

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the provisions of the federal Indian Child Welfare Act. The provisions of **Sections 11402, 11404, and 11405** shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with such act.

SEC. 4. As part of the March 15, **1985**, report which is required to be submitted by local education agencies to the Superintendent of Public Instruction under **Section 7583** of the **Government Code**, a school district or county office of education shall report all of the following:

(a) The estimated expenditures of state local assistance funds for special education and federal funds for special education for the **1984-85** fiscal year used for the provision of occupational therapy, physical therapy, and psychotherapy.

(b) The number of handicapped pupils receiving occupational therapy, physical therapy, and psychotherapy at the time of the April pupil count.

(c) The name of the agency providing the occupational therapy, physical therapy, or psychotherapy, including the name of the agency paying for the service.

SEC. 5. Notwithstanding **Section 6** of **Article XIII B** of the California Constitution and **Section 2231 or 2234** of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under **Chapter 3** (commencing with **Section 2201**) of **Part 4** of **Division 1** of that code.

SEC. 6. Notwithstanding **Section 2231.5** of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provision of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.



MINORS—INDIVIDUALIZED EDUCATION PLANS, THERAPY, ASSESSMENTS, ETC.—SERIOUSLY EMOTIONALLY DISTURBED CHILDREN: 24-HOUR OUT-OF-HOME CARE

Assembly Bill No. 882

CHAPTER 1274

An act to amend Sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, to amend and repeal Section 7583 of, to add Sections 7566.5 and 7556.7 to, and to repeal Section 7574 of, the Government Code, to amend Sections 5651, 10950, and 11401 of, and to add Chapter 6 (commencing with Section 18350) to Part 6 of Division 9 of, the Welfare and Institutions Code, relating to minors, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

(Approved by Governor September 30, 1985. Read with Secretary of State September 30, 1985.)

LEGISLATIVE COUNSEL'S DIGEST

AB 882, W. Brown. Minors.

Under existing provisions on interagency responsibilities for providing services to handicapped children, the State Department of Health Services and the State Department of Mental Health are required to adopt regulations in specified fields relating to their jurisdiction.

This bill would require these regulations to be developed in consultation with the State Department of Education.

This bill would also require a description of these services to be included in the county Short-Doyle plan.

The bill would also require that the recommendation of certain qualified professionals who conducted the assessment after specified reviews and discussions, be the recommendation of the local educational agency. This bill would be a state-mandated local program by requiring the local educational agency to ensure a qualified substitute is available if the responsible public agency representative is not available to participate in the individual education program meeting.

Existing law provides that the State Department of Health Services or any designated local public health agency shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

This bill would delete this provision.

This bill would require referrals for medical services for special education pupils to be based on detailed written reports. This bill

would be a state-mandated local program by requiring the local education agency to provide for certain medical referrals.

Existing law provides that parents shall not be liable for the costs of therapy treatment services provided by the State Department of Health Services or the State Department of Mental Health, when provided to a child in the public schools, if the services are necessary for the child to benefit from special education.

This bill would provide that parents shall not be liable for the costs of therapy treatment services as well as assessments, as specified, when rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program.

Existing law requires local agencies affected by various requirements relating to special education programs to estimate expenditures which will be shifted to or from other agencies because of specified laws and makes other related requirements.

This bill would repeal that provision on July 1, 1986.

Existing law requires specified state agencies to develop regulations relating to certain aspects of special education programs by July 1, 1986. This bill would change the date to January 1, 1986.

Under the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, aid is provided to a child who has been deprived of parental support, has been removed from the custody of a parent or guardian, and is under specified juvenile court orders or detention, or has been placed out of home pursuant to an individualized education program.

This bill would delete from these provisions of the AFDC-FC program, children placed out of home pursuant to an individualized education program and establish instead a separate program to pay for seriously emotionally disturbed children, who have been placed out of home pursuant to an individualized education program, as specified. This program would be funded from a separate appropriation in the budget of the State Department of Social Services. This bill would be a state-mandated local program by requiring payments to be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency.

This bill would also require the Superintendent of Public Instruction and the Secretary of Health and Welfare to jointly do the following: (1) prepare and implement within existing resources a plan for in-service training of specified state and local personnel and (2) submit a specified report to the Legislature and the Governor.

Under provisions on interagency responsibilities for providing services to handicapped children, local agencies are required to submit to the Department of Finance an estimate of any expenditure responsibilities which are, or will be, acquired by, or shifted from the agency. The Department of Finance is required to recommend in the annual Budget Act any adjustments necessary to implement these changes in responsibility for expenditures.

This bill would require state allocations in the 1986-87 fiscal year to be shifted only once the service has been included as a necessary part of the pupil's individualized education program and the service responsibility has been assumed by another local agency, as specified.

The bill would require the State Department of Social Services and the State Department of Education jointly to report to the Joint Legislative Budget Committee by January 1, 1988, regarding any growth in the number of severely emotionally disturbed children determined to need U-hour out-of-home care as a result of specified legislation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be payable from the State Mandates Claims Fund.

This bill would appropriate \$1,600,000 from the General Fund to the State Department of Mental Health for the purposes of the act, as specified. It would require that expenditures made by a community mental health service designated by the State Department of Mental Health to provide prescribed services be financed on a basis of 100% during the period from March 1, 1986, to June 30, 1986.

This bill would take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of, occupational therapy, physical therapy, psychotherapy, and other mental health assessments. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health & consultation with the State Department of Education, pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) Whenever an assessment has been conducted pursuant to subdivision (b) or (c), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related services or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivisions (b) and (c). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the

independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

SEC 2. Section 7572.5 of the Government Code is amended to read:

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include & representative of the county mental health department.

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(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(1) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain Financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

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(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

SEC. 3. Section 7574 of the Government Code is repealed.

SEC. 4. Section 7575 of the Government Code is amended to read:

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

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(1) The diagnosed neuromuscular, musculoskeletal, or physical handicapping condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

(4) The relationship of the medical disability to the pupil's need for special education and related services.

(5) Relevant medical records.

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

SEC. 5. Section 7576 of the Government Code is amended to read:

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

SEC. 6. Section 7579 of the Government Code is amended to read:

7579. (a) Prior to placing a handicapped child or a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the

residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of the section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

SEC. 7. Section 7582 of the Government Code is amended to read:

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Services or the State Department of Mental Health, or their designated local agencies, rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

SEC. 8. Section 7553 of the Government Code is amended to read:

7583. Each local agency affected by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1985, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shifts in expenditures caused by this chapter.

(c) Any reductions in state "allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

(e) This section shall remain in effect only until July 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1986, deletes or extends this date.

SEC. 9. Section 7586.5 is added to the Government Code, to read:

7586.5. Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

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SEC. 10. Section 7536.7 is added to the Government Code, to read:

7536.7. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly prepare and implement within existing resource a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

SEC. 11. Section 7587 of the Government Code is amended to read:

7587. By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law shall not be subject to automatic repeal until 180 days after the regulations take effect; and shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

SEC. 12. Section 5651 of the Welfare and Institutions Code is amended to read:

5651. The annual Short-Doyle plan for each county shall include all of the following:

(a) A detailed presentation of all expected expenditures of county, state, and federal government funds and all anticipated public and private revenues.

(h) A programmatic description of each of the services provided for in subdivision (a) including all of the following:

(1) Program type using definitions prescribed in the "cost allocation and planning model where applicable.

(2) The number of staff in full-time equivalent⁵ if this information is applicable to the service type.

(3) An estimate of the unduplicated number of clients served and the number of units of service to be provided.

(4) The priority populations to be served.

(5) The number of beds if this information is applicable to the service type.

(6) A detailed description of the program if the service is one newly added in the year for which the annual Short-Doyle plan is submitted or newly added in the prior year.

(7) A detailed description of the service if the number of units of services or the cost per unit of service has changed more than 25 Percent from the annual Short-Doyle plan submitted for the previous year.

(8) A detailed description of renovation or remodeling costs, if any.

(c) Additional information as may be necessary to meet local planning needs as determined by the county.

(d) A summary presentation of all expected expenditures of county, state, and federal government funds and all anticipated public and private revenues.

(e) Assurances that the county is in compliance with the following requirements:

(1) The Local Mental Health Advisory Board has reviewed and approved procedures insuring citizen and professional involvement leading to the formulation and adoption of the annual Short-Doyle plan.

(2) A quality assurance plan approved by the department is in force.

(3) Certification review hearing procedures approved by the department are in force.

(4) A plan for providing case management services approved by the department is in force.

(f) Other information determined to be necessary by the director.

(g) A description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services.

Any county that wishes to modify its plan shall obtain prior approval by the department in accordance with procedures established by the director.

SEC. 13. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of public social services, if his application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a fair hearing.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of **Health** Services shall have those powers and duties conferred on the Director of Social Services by **this** chapter to conduct fair hearings in order to secure approval of a state plan under the provisions of applicable federal law.

The State Director of **Health** Services may contract with the State Department of Social Services for the provisions of fair hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or **recipient** of public social services except aid exclusively financed by county funds or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6.

SEC. 14. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to such children all services as required by the department to children in foster care.

(b) The child has been deprived of parental support or care due to any of the reasons set out under Section 11250, provided:

(1) The child has been removed from the physical custody of his or her parent or guardian as a result of a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, and will continue to be made, to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home, and any of the following apply:

(A) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(B) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(C) The child has been detained under a court order pursuant to Section 319 or 636 which remains in effect.

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(2) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1 or in a demonstration county, pursuant to Section 16550, et seq.

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the federal Indian Child Welfare Act, Sections 11402, 11404, and 11405 shall not

be construed as limiting payment to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

SEC. 15. Chapter 6 (commencing with Section 18350) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

**CHAPTER 6. SERIOUSLY EMOTIONALLY DISTURBED CHILDREN:
24-HOUR OUT-OF-HOME CARE**

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payment shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act.

(c) Payment shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers' actual allowable costs.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

18351. (a) Payments shall be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The county welfare department located in the same county as the county mental health agency designated to provide case management services shall be responsible for payment under this section. Authorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.

(b) The county welfare department shall submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed children for 24-hour out-of-home care.

18352. County welfare departments may, at their option and with approval of the State Department of Social Services and other appropriate agencies, enter into agreements with other local agencies for the delivery of a single payment for all related services for a seriously emotionally disturbed child to a residential care provider.

18353. When an individualized education program calls for 24-hour out-of-home care, the county welfare department shall provide assistance, as necessary, in identifying a facility suited to the child's needs and in placing the child in the facility.

Symbol ▽ indicates text deletion

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18354. (a) If a provider of **24-hour** out-of-home care to a child who has ~~been placed pursuant~~ to Section 75726 of the Government Code in a **24-hour** out-of-home placement disputes an action of the designated county mental health agency regarding the providers eligibility for payment, the provider may request a review of the ~~issue~~ by the designated county mental health agency. Designated ~~county~~ mental health agencies may establish policies and procedures, ~~as~~ may be necessary, to implement ~~this~~ subdivision.

(b) If the issue remains unresolved ~~after~~ the review by the designated county mental health agency, then the provider may request a **review** of the issue by the State Department of Mental Health. The **Director** of **Mental Health** may establish policies and procedures, ~~as~~ may be necessary, to implement this ~~subdivision~~. The ~~review under this~~ subdivision ~~shall be~~ limited to ~~the issue of~~ whether the eligibility for payment criteria established by the State Department of Mental Health was correctly applied.

18355. Notwithstanding any other provision of the law, **24-hour** out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both **24-hour** out-of-home care payment and local administrative costs. Reimbursement for **24-hour** out-of-home care payment costs shall be from that appropriation, subject to the ~~same~~ sharing ratio ~~as~~ prescribed in subdivision (c) of Section 15200, and available funds. Reimbursements for local administrative costs ~~shall also~~ be from that appropriation, subject to the same sharing ratio as prescribed in Section 15204.2 for the Aid to Families with Dependent Children program, and available funds.

SEC. 15.5. (a) The Legislature recognizes that current estimates of the number of severely emotionally disturbed children in the state who need **24-hour** out-of-home care may be less than the ~~number~~ of children in need of such care as determined appropriate through the Individual Education Plan (IEP) process ~~established~~ under Chapter 1747, of the Statutes of ~~1984~~.

(b) Therefore, the State Department of **Social Services** and the State Department of Education shall jointly report to the Joint Legislative Budget Committee by January 1, **1988**, regarding any growth in the number of severely emotionally disturbed children determined to need **24-hour** out-of-home care ~~as~~ a result of Chapter 1747 of the Statutes of 1954. This report shall include documentation of the cost impacts on the state, ~~county~~, and federal governments for the ~~cost of 24-hour~~ out-of-home care for these children.

SEC. 16. Funds not to exceed the total amount reported by the State Department of Education, as verified by the Department of Finance pursuant to Section **7583** of the Government Code and Section 4 of Chapter 1747 ~~of the Statutes of 1984~~, ~~shall~~ be transferred July 1, 1956, from the State Department of Education to the state departments responsible for ~~services specified in Chapter 26~~ (commencing with Section 7570) of Division 7 of Title 1 of the

Government Code and designated in each pupil's individualized education program.

SEC. 17. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

SEC. 18. The sum of one million six hundred thousand dollars (\$1,600,000) is hereby appropriated from the General Fund to the State Department of Mental Health for purposes of conducting assessments and participating in developing individualized education programs as required by Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, during the period of March 1, 1986 through June 30, 1986. Notwithstanding Section 5705 of the Welfare and Institutions Code, expenditures made by a community mental health service designated by the State Department of Mental Health to provide the services described in this section shall be financed on a basis of 100 percent state funds during the period from March 1, 1986, to June 30, 1986, inclusive.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for regulations to be developed in time for the orderly transfers of service and funding responsibility required by Chapter 1747 of the Statutes of 1984, it is necessary that this bill take effect immediately.

MULTIFAMILY RENTAL HOUSING-BONDS AND SECURITIES-CONSTRUCTION AND MORTGAGE LOANS

Assembly Bill No. 2002

CHAPTER 1275

An act to amend Sections 51005, 51335, and 52080 of the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1985. Filed with Secretary of State September 30, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, M. Waters. Multifamily rental housing.

(1) Existing law requires the California Housing Finance Agency, within 90 days following the close of each fiscal year, to submit an

TITLE 2

JOINT REGULATIONS FOR HANDICAPPED CHILDREN

(p. 2051)

(Register 22, No. 25—7-12-66)

DMSION 9. JOINT REGULATIONS FOR HANDICAPPED CHILDREN

CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO HANDICAPPED CHILDREN

DETAILED ANALYSIS

CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO HANDICAPPED CHILDREN

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EXHIBIT "C"

§ 60000
(p. 2052)

JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

TITLE 2

(Register 86, No. 28—7-12-86)

Article 1. General Provisions

60000. Scope.

The provisions of this chapter shall implement Chapter 26 (commenting with Section 7570) of Division 7 of Title 1 of the Government Code relating to Intergovernmental responsibilities for providing services to handicapped children. This chapter applies to the State Departments of Education, Mental Health, Health Services, Social Services, and their designated local agencies.

The intent of this chapter is to assure conformity with Public Law 94-142: The Education for All Handicapped Children Act of 1975, (20 U.S.C. §1401 et seq.), and Section 504 of Public Law 93-112: The Rehabilitation Act of 1973, (29 U.S.C. § 794), and their implementing regulations including Sections 76.1 et seq., 104.1 et seq., and 300.1 et seq. of Title 34 of the Code of Federal Regulations. Thus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to individuals with exceptional needs.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7570, Government Code.

HISTORY:

1. New Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) filed 12-31-85 as an emergency; designated effective 1-1-86 (Register 86, No. 1). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be repealed on 6-30-86.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) refiled 6-30-86 as an emergency; effective upon filing (Register 86, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-28-86.

3. Editorial correction of HISTORY NOTE No. 1 (Register 86, No. 28).

60010. General Definitions.

(a) Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense; words in the singular form include the plural form; and use of the masculine gender includes the feminine gender. Use of the word "shall" denotes mandatory conduct; "may" denotes permissive conduct.

(b) "Confidentiality" means the protection of spoken and written communications, including clinical and educational records governed by the provisions of Section 99.3 of Title 45 of the Code of Federal Regulations, Section 300.500 of Title 34 of the Code of Federal Regulations, Sections 827, 4514, 5328, and 10850 of the Welfare and Institutions Code, and Section 2890 of Title 17 of the California Administrative Code.

(c) "County superintendent of schools" means either an appointed or elected official who, within the county's jurisdiction, supervises and ensures adherence to education laws as defined in the California State Constitution, Education Code, and Title 5 of the California Administrative Code.

(d) "Designated instruction and service" and "related services" means a component of program options as described in Sections 56361(b) and 56363(b) of the Education Code, Section 1401(17) of Title 20 of the United States Code, and Section 300.13 of Title 34 of the Code of Federal Regulations.

(e) "Individualized education program team" means a team which is constituted in accordance with Section 56341 of the Education Code, and Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) "Expanded individualized education program team" means a team which is constituted in accordance with Section 56341 of the Education Code and pursuant to Section 7572.5 of the Government Code includes a representative of the county mental health department.

TITLE 2

**JOINT REGULATIONS FOR
HANDICAPPED CHILDREN**

**§ 60020
(p. 2053)**

(Register 10, No. 1-14-66)

(g) "Individual with exceptional needs" means those individuals who meet the requirements of Section 56025 of the Education Code and Sections 3030 and 3031 of Title 5 of the California Administrative Code.

(h) "Interagency agreement" means a negotiated written document which defines each agency's role and responsibilities for serving individuals with exceptional needs and assist in promoting coordination of these services.

(i) "Parent" means those persons described in Section 56028 of the Education Code.

(j) "Special education" means specially designed instruction as described in Section 56031 of the Education Code and Section 300.14 of Title 34 of the Code of Federal Regulations.

(k) "Responsible local education agency" means the school district or county office specified in Section 56030 of the Education Code.

(l) "Special education services region" means the school district organized in accordance with Section 56032 of the Education Code.

(m) "Special education local plan area" means the service area covered by the local plan developed in accordance with Section 56170 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7570, Government Code; Section 5328, Welfare and Institutions Code; Section 2890, Title 17, California Administrative Code; Section 300.500, Title 34, Code of Federal Regulations; and Section 99.3, Title 45, Code of Federal Regulations.

Article 2. Mental Health and Related Services

60020. Mental Health Definitions.

(a) "Psychotherapy and other mental health services" means those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code, and provided by a local mental health program directly or by contract.

(b) "Mental health assessments" means assessment, as described in Section 543, subdivision (b) of Title 9 of the California Administrative Code, conducted by mental health professionals and conducted in accordance with Section 56320 of the Education Code by a person employed or designated by a local mental health program.

(c) "Mental health professionals" means psychiatrists, psychologists, clinical social workers, and marriage, family and child counselors meeting the appropriate criteria specified in Sections 5600.2 and 5650 of the Welfare and Institutions Code, and Article 8 of subchapter 3 of Title 9 of the California Administrative Code.

(d) "Local mental health program" means a county community mental health program established in accordance with the Short-Doyle Act (Part 2 commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or the county welfare agency when designated pursuant to Section 7572.5 of the Government Code.

(e) "Local Mental Health Director" means the officer appointed by the county governing body to manage a local mental health program.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56320, Education Code; and Sections 542 and 543, Title 9, California Administrative Code.

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(p. 2054)

JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

TITLE 2

(Register 88, No. 1-14-88)

60030. Local Intensity Agreement.

(a) In order to facilitate the provision of services required by subdivisions (a), (c), (d), and (e) of Section 7572 and Section 7572.6 of the Government Code:

(1) The Local Mental Health Director shall appoint liaison person(s) for the local mental health program. The County Superintendent of Schools shall ensure the appointment of liaison person(s) for the special education local plan areas by the superintendent or designee of the responsible local education agency of the special education local plan area.

(2) The Local Mental Health Director and the County Superintendent of Schools shall ensure, prior to July 1, 1986, that an interagency agreement is developed. Every three years thereafter the interagency agreement shall be renewed, and revised, if necessary. This provision does not preclude the parties from revising the interagency agreement at any time they determine a revision is necessary.

(b) The interagency agreement shall include, but not be limited to, a delineation of the process and procedure for:

(1) Interagency referrals of pupils which minimize time line delays. This may include written parental consent on the receiving agency's forms.

(2) Timely exchange of pupil information in accordance with applicable procedures ensuring confidentiality.

(3) Participation of mental health professionals, including those contracted to provide services, at individualized education program team meetings pursuant to subdivisions (d) and (e) of Section 7672 and Section 7576 of the Government Code.

(4) Developing or amending the mental health related service goals and objectives, and the frequency and duration of such services indicated on the pupil's individualized education program.

(5) Transportation of individuals with exceptional needs to and from the mental health service site when such service is not provided at the school.

(6) Provision by the school of an assigned, appropriate space for delivery of mental health services or a combination of education and mental health services to be provided at the school.

(7) Continuation of mental health services during periods of school vacation when required by the individualized education program.

(8) Identification of existing public and state-certified nonpublic educational programs, treatment modalities, and location of appropriate residential placements which may be used for placement by the expanded individualized education program team.

(9) Out-of-home placement of seriously emotionally disturbed pupils in accordance with the educational and treatment goals on the individualized education program.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 5608, Welfare and Institutions Code; and Section 56140, Education Code.

60040. Referral and Assessment.

(a) A responsible local education agency preparing an initial assessment plan in accordance with Section 56320 et. seq. of the Education Code may, with written parental consent, refer the pupil suspected of being an individual with exceptional needs to the local mental health program to determine the need for mental health services when:

TITLE 2**JOINT REGULATIONS FOR
HANDICAPPED CHILDREN****§ 60040
(p. 2055)****(Register 22, No. 1-14-86)**

(1) The pupil meets the requirements of (b) (4) of this section; and,
(2) The provision of psychological and counseling services described in Sections 3051.9, 3051.10, and 3051.11 of Title 5 of the California Administrative Code is not appropriate to meet the pupil's needs.

(b) Prior to referring an individual with exceptional needs to a local mental health program to determine the need for mental health services, the responsible local education agency shall ensure that:

(1) Written parental consent has been obtained:

(2) An assessment has been made by school site personnel in accordance with Sections 56001(J), 56324, and 56320 (b) (3) of the Education Code;

(3) Counseling and guidance described in Sections 3051.9, 3951.10, and 3051.11 of Title 5 of the California Administrative Code has been provided to the pupil and the individualized education program team has determined that such counseling is not meeting the pupil's needs;

(4) A review of all assessment data, including observations of the pupil in a variety of educational and natural settings, documents that:

(A) The behavioral characteristics of the pupil adversely affect the pupil's educational performance as measured by: standardized achievement tests reported in scores and compared to measured ability when appropriate; teacher observations; work samples; and grade reports reflecting classroom functioning; or, other measures determined to be appropriate by the individualized education program team.

(B) The behavioral characteristics of the pupil cannot be defined solely as a behavior disorder or a temporary adjustment problem, or cannot be resolved with short-term counseling.

(C) The age of onset was from 30 months to 21 years and has been observed for at least 6 months.

(D) The behavioral characteristics of the pupil are present in several settings, including the school, the community, and the home.

(E) The adverse behavioral characteristics of the pupil are severe, as indicated by their rate of occurrence and intensity.

(c) When referring a pupil suspected of being an individual with exceptional needs or an identified individual with exceptional needs to the local mental health program, the responsible local education agency shall:

(1) Obtain written parental consent to forward educational information to the local mental health program. Educational information shall include:

(A) A copy of the assessment reports completed in accordance with Section, 56327 of the Education Code.

(B) Current, relevant behavior observations of the pupil in a variety of educational and natural settings.

(C) A report prepared by personnel who provided "specialized" counseling and guidance services to the individual with exceptional needs as described in Sections 3051.9, 3051.10, and 3051.11 of Title 5 of the California Administrative Code and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil suspected of being an individual with exceptional needs.

(2) Obtain written parental consent to allow the mental health professional to observe the pupil during school.

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(p. 2056)

JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

TITLE 2

(Register 24, No. 1-1-4-86)

3) Propose a date for the individualized education program team meeting.
(d) The local mental health program shall be responsible for reviewing the educational information, observing, if necessary, the pupil in the school environment, and determining if mental health assessments are needed.

(L) if mental health assessments are deemed necessary by a mental health professional, a mental health assessment plan shall be developed and the parent's written informed consent obtained pursuant to Section 300.500 of Title 34 of Code of the Federal Regulations and Section 7572 of the Government Code.

(2) When the mental health assessments cannot be completed within the required time limit specified in Section 56344 of the Education Code, the local mental health professional or designee shall, no later than 15 days prior to the scheduled meeting, notify the individualized education program team administrator or designee.

(3) The individualized education program team administrator or designee shall contact the parent to obtain permission for an extension, not to exceed 15 days, of the individualized education program team meeting to allow the mental health assessments to be completed.

(e) The local mental health program shall provide to the individualized education program team a written assessment report in accordance with Section 55327 of the Education Code.

NOTE: Authority cited: Section 7587, Government We. Reference: Section 56363, Education Code; and Sections 3051.9, 3051.10 and 3051.11, Title 5, California Administrative Code.

60350. Individualized Education Program.

(a) When mental health services are to be provided, the following written information shall be included in the individualized education program:

- (1) A description of the mental health services to be provided;
- (2) The goals and objectives of the mental health services, with appropriate objective criteria and evaluation procedures to determine whether objectives are being achieved; and,
- (3) Initiation, frequency, and duration of the mental health services to be provided to the pupil.

(b) Parental approval for the provision of mental health treatment services shall be supported by a signed consent for treatment.

NOTE: Authority cited: Section 7567, Government Code, Reference: Section 300.346, Title 34, Code of the Federal Regulations; and Section 56345, Education Code.

Article 3. 24-Hour Out-of-Home Care

60100. Placement of Seriously Emotionally Disturbed Pupils.

(a) The local mental health program and the special education local plan area liaison person(s) shall define the process and procedures for coordinating local services to promote alternatives to out-of-home care.

(b) If the individualized education program team has determined that local educational program options cannot implement the pupil's individualized education program and is considering a recommendation of residential placement for a pupil who meets the eligibility criteria specified in Section 3030(i) of Title 5 of the California Administrative Code, the team meeting shall continue if a representative of the local mental health program is present,

TITLE 2**JOINT REGULATIONS FOR
HANDICAPPED CHILDREN****§ 60100
(p. 2057)****(Register No. 1-1448)**

(1) If a representative from the local mental health program is not present, the individualized education program team meeting shall be adjourned and reconvened within 15 calendar days with mental health participation.

(2) If the pupil is a dependent or ward of the court, the agency vested with care, custody and control of the pupil shall be notified of the individualized education program meeting and shall function as a pupil's legally responsible agent for purposes of participating in the individualized education program team process.

(c) If the local mental health program determines that additional mental health assessments are needed, the mental health representative shall proceed in accordance with Section 60040.

(d) The expanded individualized education program team shall consider all possible alternatives to out-of-home placement. Such alternatives may include any combination of cooperatively developed education and mental health service options, as described in Sections 56361 and 56365 of the Education Code and mental health services, as described in Sections 542 and 543 of Title 9 of the California Administrative Code.

(e) When residential placement is the final decision of the expanded individualized education program team, the team shall develop a written statement documenting the pupil's educational and mental health treatment needs that support the recommendation for this placement.

(f) The expanded individualized education program team shall identify one or more appropriate, least restrictive and least costly residential placement alternatives. The facility must have a rate set in accordance with Section 60200(d) and shall be:

(1) Located within or adjacent to the county of residence of the pupil's parents or other legally responsible agent pursuant to Section 300.552(a)(3) of Title 34 of the Code of Federal Regulations, except when documentation is provided that no nearby placement alternative is able to implement the individualized education program; and

(2) A privately operated residential facility licensed by the Department of Social Services with an appropriate off-grounds public school program available to pupils; or,

(3) A privately operated residential facility licensed by the Department of Social Services with an appropriate on-grounds public school program available to pupils; or,

(4) A privately operated residential facility licensed by the Department of Social Services wherein a nonpublic, nonsectarian school program is certified by the State Department of Education and available to pupils.

(g) The local mental health program representative to the expanded individualized education program team shall be responsible for notifying the Local Mental Health Director or designee of the team's decision within one working day of the individualized education program team meeting.

NOTE: Authority cited: Section 7557, Government Code. Reference: Section 3061, Title 5, California Administrative Code; and Section 300.305, Title 34, Code of Federal Regulations.

§60110
(p. 2058)

JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

TITLE 2

(Register 84, No. 1—1-4-86)

60110. Case Management.

(a) The Local Mental Health Director or designee shall designate a lead case manager to finalize the pupil placement plan with the approval of the parent and the individualized education program team within 15 days from the decision to place the pupil in a residential facility. Actual placement must be accomplished as soon as possible.

(b) Pupils who have been adjudicated as dependents or wards of the court shall receive case management for required child welfare services and Aid to Families with Dependent Children-Foster Care services from the agency vested with the care, custody, and control of the pupil.

(c) Case management is defined pursuant to subdivision (a) of Section 548 of Title 9 of the California Administrative Code and shall include the following responsibilities:

(1) Convening parent(s) and representatives of public and private agencies in accordance with subsection (f) of Section 60100 in order to identify the appropriate residential placement.

(2) Verifying with the educational administrator or designee the approval of the local governing board of the district, special education service region, or county office pursuant to Section 56342 of the Education Code.

(3) Completing the local mental health program payment authorization in order to initiate out-of-home care payments.

(4) Coordinating the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.

(5) Coordinating the completion of the residential placement as soon as possible.

(6) Developing the plan for and assisting the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.

(7) Facilitating the enrollment of the pupil in the residential facility.

(8) Conducting quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the individualized education program.

(9) Notifying the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the individualized education program.

(10) Coordinating the six-month expanded individualized education team meeting with the local education agency administrator or designee.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 3061, Title 5, California Administrative Code; and Section 548(A), Title 9, California Administrative Code.

Article 4. Financial Provision for 24-Hour Out-of-Home Placement

60200. Financial Responsibilities.

(a) The purpose of this article is to establish conditions and limitations for reimbursement for the provision of related services and 24-hour out-of-home placement described in Articles 2 and 3. These services and placements are to be provided at no cost to the parent.

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JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

§ 60300
(p. 2959)

(Register 88, No. 1—1-4-66)

- (b) The local mental health program shall be financially responsible for:
- (1) Provision of mental health services as recommended by a local mental health program representative and included in an individualized education program. Services shall be provided either directly or by contract. Contract services shall be delivered in accordance with Section 523 of Title Q of the California Administrative Code. These services must be provided within the State of California.
 - (2) Reimbursement to the provider for these mental health services shall be a negotiated net amount or rate approved by the Director of Mental Health as provided in Section 5705.2 of the Welfare and Institutions Code, or the providers' actual reasonable cost.
 - (c) The local education agency shall be fiscally responsible for:
 - (1) Transportation provided during school hours to and from a mental health treatment center as specified in the pupil's individualized education program and in accordance with Section 300.13 (b) (13) of Title 34 of the Code of Federal Regulations.
 - (2) Those items agreed upon in the nonpublic school services contract pursuant to Section 3066 of Title 5 of the California Administrative Code, with the exclusion of mental health services and 24-hour out-of-home care, for a seriously emotionally disturbed pupil who has been placed pursuant to Section 5752.5 of the Government Code.
 - (3) Mental health services when an individual with exceptional needs is placed in a nonpublic school outside of the State of California.
 - (d) The State Department of Social Services shall be responsible for determining the rate to be paid to providers for 24-hour out-of-home care for a seriously emotionally disturbed pupil in accordance with Section 18350 of the Welfare and Institutions Code.
 - (e) The County Welfare Department shall be responsible for issuing payments to providers for 24-hour out-of-home care for a seriously emotionally disturbed pupil in accordance with Section 18351 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 7567, Government Code. Reference: Section 3066, Title 6, California Administrative Code.

Article 5. Occupational Therapy and Physical Therapy

60300. Definitions.

- (a) "Medical Therapy Conference Team" means a team composed of the child parent or guardian, Medical Therapy Unit Conference physician, occupational therapist or physical therapist or both, if appropriate. Other attendees may be invited with parental consent and team approval for the purpose of coordination of patient services.
- (b) "California Children Services Panel" means that group of physicians and other providers of services and equipment who have applied to and been approved by California Children Services to give services.
- (c) "Independent county agency" means a county meeting the population criteria pursuant to Section 252 of the Health and Safety Code.
- (d) "Dependent county agency" means a county meeting the population criteria pursuant to Sections 252 and 258 of the Health and Safety Code.

§ 60310
(p. 2060)

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TITLE 2

(Register as. No. 1-1404)

(e) "Medical therapy unit" means a designated public school location where the California Children Services medical therapy services are provided.

(f) "Occupational therapy and physical therapy" means medically necessary services provided by qualified medical personnel in accordance with Section 250 of the Health and Safety Code by reason of a medical diagnosis.

(g) "Qualified medical personnel" means occupational therapists and physical therapists licensed to practice in the State of California who are employed or designated by California Children Services.

(h) "Medically necessary therapy" means that therapy which has as its purpose the improvement or amelioration of a neuromuscular or musculoskeletal condition and shall include standard habilitation and rehabilitation procedures. This therapy shall not include interventions which can be carried out by educational personnel.

(i) "Necessary equipment" means that equipment provided by a local education agency which enables the medical therapy unit staff to provide the therapy services to individuals with exceptional needs.

(j) "Necessary space" means facilities needed by a medical therapy unit which includes one, but not necessarily both, of the following:

(1) "A primary medical therapy unit" which provides areas for conferences, office(s) private evaluation, treatment, training bathroom and kitchen, storage, and workshop. The specific requirements are dependent upon local needs as determined by joint agreement of the local California Children Services and local education agencies and approved by both State Departments of Health Services and Education.

(2) "A satellite unit" is an adjunct to the primary medical therapy unit and is an assigned private area with necessary equipment to enable the California Children Services' staff to provide services at a site closest to the pupil's school of attendance.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 250, Health and Safety Code.

60310. Local Interagency Agreement.

(a) In order to facilitate the provisions of services described in subdivisions (a), (b), (d), and (e) of Section 7527 of the Government Code, and subdivisions (a), (b) and (c) of Section 7575 of the Government Code, each independent county agency and each authorized dependent county agency of California Children Services shall appoint a liaison person for the county agency of California Children Services. The County Superintendent of Schools shall ensure the appointment of a liaison person for the special education local plan areas by the superintendent or the designee of the responsible local education agency of the special education local plan area.

(b) Each independent county agency and each dependent county agency of California Children Services and the County Superintendent of Schools shall ensure, prior to July 6, 1986, the development and implementation of a local interagency agreement which shall include, but not be limited to a delineation of the process and procedure for:

(1) Identification of a liaison person within each local education agency in the special education local plan areas and within each California Children Services' county agency;

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§ 60320
(p. 2061)

(Register 66, No. 1-1-4-66)

(8) Referral of child birth to twenty-one years of age, who have or are suspected of having a neuromuscular, musculoskeletal, or other physical impairment requiring medically necessary occupational therapy or physical therapy.

(3) Timely exchange between the agencies of pertinent information concerning the individual with exception needs upon receiving parent's written, informed consent obtained in accordance with Section 300.500 of Title 34, of the Code of Federal Regulations:

(4) Giving adequate notice to the local California Children Services' agency for all individualized education program team meetings when participation by their staff is required;

(5) Participation of California Children Services' representative in the individualized education program team meetings;

(6) Developing or amending therapy services indicated on the pupil's individualized education program in accordance with Section 56341 of the Education Code;

(7) Identification of individuals with exceptional needs to receive California Children Services' medically necessary occupational therapy or physical therapy services at the primary medical therapy unit or satellite unit;

(8) Determining the location of California Children Services' primary medical therapy or satellite units;

(9) Provision and maintenance of necessary space and equipment, including the administrative and fiscal responsibilities;

(10) Approval of the utilization of designated therapy space when not in use by California Children Services' staff; and,

(11) Provision of medically necessary therapy services to pupils residing in State Special Schools, when appropriate.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

60320. Referral and Assessment.

(a) The individualized education program team shall keep a record of all referrals of parents of handicapped pupils to California Children Services to determine the need for medically necessary occupational therapy or physical therapy.

(1) The local education agency or State Special School shall notify California Children Services of the proposed date of the individualized education program meeting.

(2) California Children Services shall develop an assessment plan and obtain the parent's written informed consent pursuant to Section 300.500 of Title 34 of the Code of Federal Regulations and Section 7572 of the Government Code.

(3) The California Children Services shall notify the local education agency or the State Special School if the evaluation cannot be completed in time for the individualized education program team meeting. This notice shall include the date when the evaluations are expected to be completed and any request for extension of the 50-day time line in Section 56344 of the Education Code.

§ 60320
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(Register 84, No. 1-14,461)

(4) The individualized education program team administrator or designee shall seek the parent's written agreement to the time extension.

(b) To qualify for the provision of medically necessary occupational therapy or physical therapy by California Children Services, the pupil must:

(1) Meet the eligibility requirements as defined in Sections 250.5 and 253.5 of the Health and Safety Code;

(2) Need medically necessary therapy as recommended or approved by the Medical Therapy Conference Team; and,

(3) Be recommended to the individualized education program team by a California Children Services panel physician of the appropriate specialty for treating the condition requiring therapy.

(c) California Children Services shall provide the individualized education program team with the necessary assessment information in accordance with Section 56327 of the Education Code. When the California Children Services' panel physician determines that a pupil does not need medically necessary therapy the individualized education program team shall be provided with a statement which delineates the bases for the determination.

(d) For those pupils who meet eligibility requirements defined in Section 250.5 of the Health and Safety Code and whose disabilities are such that skilled services of occupational or physical therapists are not required to meet their needs, the Medical Therapy Conference Team shall identify consultation needs.

(e) When providing medically necessary therapy, the California Children Services' treatment plan may be used as the required written information for inclusion as a related service on the individualized education program and shall be attached thereto.

(f) For those pupils who do not need medically necessary therapy the individualized education program team will review the California Children Services' report and the independent assessment as well as assess the pupil in all areas of suspected disability to determine which activities may be required to assist the pupil to benefit from special education.

(g) When the individualized education program team determines that the activities are necessary, goals and objectives relating to the activities identified in the assessment reports shall be written and provided by qualified personnel whose employment standards are defined in Article 4 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of the Education Code.

NOTE: Authority cited: Section 7567, Government Code. Reference: Sections 2505 and 253.5, Health and Safety Code.

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(p. 2063)

(Register 88, No. 1--14-88)

60330. Space and Equipment for Occupational Therapy and Physical Therapy.

(a) The primary medical therapy unit and satellite units shall be for the exclusive use of the California Children Services' staff when they are on site. The special education administrator of the local education agency in which the units are located shall coordinate with the California Children Services' staff for other use of the space.

(b) Each special education local plan required in Section 56200 of the Education Code shall include:

(1) Which local education agency shall be responsible for the provision, maintenance, and operation of the facility housing the primary medical therapy unit and satellite units on a twelve-month basis;

(2) Which local education agency shall have the fiscal responsibility for the provision and maintenance of necessary equipment and instructional supplies; and

(3) The process for any change of responsibility or relocation of the primary medical therapy unit and any satellite units.

(c) The state Departments of Education and Health Services shall develop guidelines for local use when designing, remodeling, relocating, and equipping a medical therapy unit and any satellite unit.

(d) All construction and relocation of primary medical therapy units must be approved by the State Departments of Education and Health Services.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

Article 6. Home Health Aide

60400. Specialized Health Needs Aide.

(a) Individuals with exceptional needs eligible for a home health aide in accordance with Section 7575(e) of the Government Code shall be all of the following:

(1) A Medi-Cal beneficiary.

(2) Receiving services from a home health agency pursuant to Section 51337 of Title 22 of the California Administrative Code.

(3) Considered for an educational placement outside of the home.

(b) Individuals with exceptional needs who are not beneficiaries of Medi-Cal shall have their specialized health needs provided by the responsible educational agency, pursuant to Section 49423.5 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 51337, Title 22, California Administrative Code.

Article 7. Licensing a Community Care Facility

60500. Exchange of Information.

(a) "Shall consult" as used in Section 7580 of the Government Code, means the exchange of written information between the Community Care Licensing district office of the Department of Social Services, the applicant facility, and the special education local plan area administrator in consultation with the local district in which the facility is to be located.

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(p. 2064)

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(Register M, No. 1-1486)

(b) Community Care Licensing district offices and the county office of education shall annually exchange information describing how special education services are geographically organized and designate contact persons in the county office of education and the Social Services district office.

(c) Community Care Licensing district offices, upon receiving an application to license a new group home or small family home or to increase the capacity of an existing group home or small family home which serves or will serve pupils, birth to eighteen years of age, shall provide the county office of education with a copy of the application face sheet (LIC 200). The county office of education shall forward the face sheet to the appropriate special education local plan area administrator.

(d) Within 15 days of the receipt of the application face sheet, the special education local plan area administrator and the administrator of the local educational agency in which the new or expanded facility is located shall provide the applicant with the following information:

(1) The types and locations of public and state certified nonpublic special education programs available within the special education local plan area for the proposed pupil population; and

(2) the ability of the education agencies within the special education local plan area to absorb, expand, or to open new programs to meet the needs of the proposed pupil population given the limitations of instructional Personnel Service units, available school facilities, funds, and staff.

(e) The Community Care Licensing District Office of the Department of Social Services shall notify the county office of education when a group home or small family home is licensed by providing a copy of the license notice (LIC 272).

(f) The county office of education, in accordance with Section 56156(d) of the Education Code, shall provide the special education local plan area administrator with a list of the currently licensed group homes and small family homes within the county.

NOTE: Authority cited: Section 7.587, Government Code. Reference: Section 7557, Government Code; and Section 56156, Education Code.

Article 8. Procedural Safeguards

60550. 'Due Process Hearings.

(a) Due process hearing procedures apply to the resolution of disagreements between a parent and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil.

(b) Upon receiving a request for a due process hearing regarding the services provided or refused by another agency, the Superintendent of Public Instruction shall send the state and local agency involved a copy of the hearing request, the name of the assigned mediator, and the date of the mediation meeting in accordance with Section 56503 of the Education Code. Nothing in this section shall preclude any party from waiving mediation.

(c) If the mediator cannot resolve the issues, a state-level hearing shall be conducted by a hearing officer assigned by the Office of Administrative Hearings in accordance with Section 56505 of the Education Code.

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{60610
(p. 2065)

(Register 26, No. 1-1-4-66)

(d) The agency which provides the service in dispute is responsible for preparing documentation and providing testimony supporting its position.

(e) The State Department of Education is fiscally responsible for services provided by the mediator and the Office of Administrative Hearings in response to a parent's request for a due process hearing.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56156(d), Education Code.

Article 9. Interagency Dispute Resolution

60600. Application of Procedures.

(a) The procedures of this article apply when there is a dispute between or among the State Department of Education or local education agency or both and any agency included in Sections 7575 and 7576 of the Government Code over the provision of occupational therapy physical therapy, psychotherapy, or other mental health services, when such services are contained in a child's individualized education program.

(b) A dispute over the provision of services means a dispute over which agency is to actually deliver the service, or to pay for the services, when the service is contained in the child's individualized education program.

(c) These procedures apply only where the disputed service has been included in the individualized education program in accordance with Chapter 26 (commencing with Section 7570) of Division 7 of Title I of the Government Code. Whenever a service has been included in an individualized education program by an individualized education program team without the recommendation of the qualified professional in accordance with Section 7572 of the Government Code, the local education agency shall be solely responsible for the provision of the service. In such circumstances, the dispute, if any is between the parent and the local educational agency and shall be resolved through the due process or complaint procedures, pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code, as applicable.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

60610. Resolution Procedure.

(a) Whenever notification is filed pursuant to subdivision (a) of Section 7585 of the Government Code, the dispute procedures shall not interfere with the pupil's right to receive a free, appropriate public education.

(1) If one of the agencies specified in Sections 7575, 7576, 7577, and 7578 of the Government Code has been providing the service prior to notification of the failure to provide a related service or designated instruction and service that agency shall continue to provide the service until the dispute resolution proceedings are completed.

(2) If no agency specified in this section has provided the service prior to the notification of the dispute, the State Superintendent of Public Instruction shall ensure that the service is provided in accordance with the individualized education program, until the dispute resolution proceedings are completed.

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(p. 2066)

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(Register No. 1-14-88)

(3) Arrangements, other than those specified in subparagraphs (1) and (2), may be by written agreement between the involved public agencies, provided the pupil's individualized education program is not altered, except as to which agency delivers or pays for the service if such specification is included in the individualized education program.

(b) In resolving the dispute, the Superintendent of Public Instruction and Secretary of the Health and Welfare Agency shall meet to resolve the issue within 15 days of receipt of notice.

(c) Once the dispute resolution procedures have been completed, the agency determined responsible for the service shall pay for, or provide the service, and shall reimburse the other agency which provided the service pursuant to paragraph (a) of this section, if applicable.

(d) A written copy of the resolution shall be mailed to affected parties pursuant to Section 7585 of the Government Code.

NOTE Authority cited: Section 7587, Government Code. Reference: Section 7587, Government code.

COMMISSION ON STATE MANDATES

1130 K STREET, SUITE LL50
SACRAMENTO, CA 958 14
(916) 323-3562



August 27, 1987

Susan A. Chapman
County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110

RE: CSM-4282

Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Ms. Chapman:

Your test claim filing was received in this office on August 17, 1987. 'This test claim requests that the commission consider whether reimbursable "state mandated costs" resulted from Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Division 9 of Title 2 of the California Administrative Code, Handicapped and Disabled Students. This claim is set for hearing on January 21, 1988, at 10:00 a.m. in Room 2040, State Capitol, Sacramento, California.

To aid in its decision on the mandated cost issue, the commission requests that all state agencies receiving this letter analyze the merits of the claim and make recommendations on its validity under the provisions of the Government Code, Sections 17510 through 17630. Specifically, state agencies should consider whether the above entitled statutes and regulations have imposed a new program upon counties, or a higher level of service in an existing county program.

State agency recommendations should include whether a representative will appear at the hearing. Some departments may be required to send a representative. All state agency recommendations will be immediately forwarded to claimants and their representatives upon receipt by this office. Please be advised that, during the hearing, a court reporter will be present and a tape recording will be made. Any persons wishing either a tape recording or transcript should direct a written request to this office. A fee will be charged for preparation of the tape and/or transcript.

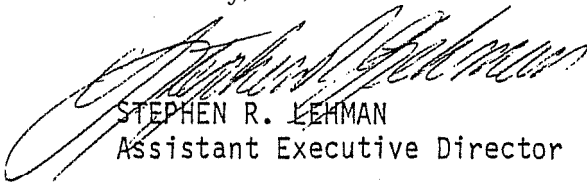
Written state agency recommendations must be received by this office no later than November 26, 1987, so the claimants and their representatives will have sufficient time to respond to any issues raised. Rebuttals from the claimant must be submitted by December 7, 1987. All testimonial and documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized or competent to do so, and the basis for authorization or competence must be stated in the declaration.

Based upon information provided by all interested parties, the commission will determine whether the claim meets the statutory requirements. Should the commission determine that a mandate does exist, parameters and guidelines for reimbursing all eligible local entities will be developed. In accordance with the commission's regulations the claimant will be responsible for providing the first draft of the parameters and guidelines.

Claimants and state agencies should note that they are required to submit all information, including arguments, declarations, laws, and evidence being relied upon, to support their position by the due dates shown. If substantial new evidence or argument, either oral or written, is presented at the hearing, a probable consequence will be the continuation of the claim to a subsequent hearing. The continuation will be required so the opposing party and commission staff will have the opportunity to review the new information.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



STEPHEN R. LEHMAN
Assistant Executive Director

SRL:jb:0105s

Enclosure: Test Claim

cc: Jim Apps, Department of Finance-- Recommendation Due: 11/26/87
Glen Beatie, State Controller's Office
Phil Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office
Lynn Whetstone, Department of Mental Health-- Recommendation Due: 11/26/87
William Pieper, Department of Education-- Recommendation Due: 11/26/87
Allan Burdick, County Supervisors Association of California
Marla Zwolan, David M Griffith & Associates

GERALD J. GEERLINGS
COUNTY COUNSEL

PRINCIPAL DEPUTIES

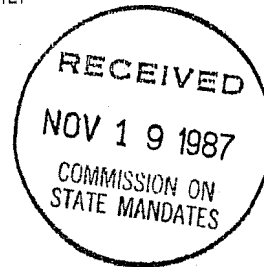
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JOAN A. BORGER
JAMES J. BRZYTTWA
SHERRY G. GORDON
PAMELA J. ANDERSON
MARY MITCHELL

November 17, 1987



Stephen R. Lehman
Assistant Executive Director
State of California
Commission on State Mandates
1130 K Street, Suite 1150
Sacramento, CA 95814

Re: CSM-4282; Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman,

The enclosed declaration of John J. Ryan, Director of the Riverside County Department of Mental Health, is being submitted to you in support of the claim of the County of Santa Clara in the above-referenced matter.

The County of Riverside is desirous of having this declaration considered by the commission in support of the claim of Santa Clara, and accordingly we are formally requesting that it be submitted for the commission's consideration.

If problems arise in this matter, please contact me at your convenience.

Thank you for your consideration in this matter,

Sincerely,

WILLIAM C. KATZENSTEIN
Deputy County Counsel

WCK:bas

cc: Susan A. Chapman, Deputy County Counsel, Santa Clara County
Andrea Hix, David M. Griffith and Associates

1 November 17, 1987

2
3 RE: CSM-4282, The supporting declaration of the County of
4 Riverside re;

5 Claim of County of Santa Clara
6 Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
7 Title 2, CAC, Division 9
8 Handicapped and Disabled Students

9 I, JOHN J. RYAN, Director of the Riverside County
10 Department of Mental Health, declare;

11 In fiscal year 1986/87 Riverside County Mental Health
12 served 448 handicapped children as mandated by AB 3632 and AB 882
13 (Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of
14 1985). Those services cost \$993,474 while the State provided an
15 allocation to the county of only \$179,370 for the services, Thus,
16 \$814,104 had to be expended out of the regular Short Doyle
17 allocation (90% State, 10% County) to serve those children. As of
18 June 30, 1987, 198 children who had been assessed as needing
19 services under this mandated program were, because of limited
20 resources, still waiting to receive ongoing treatment. This was
21 in addition to 195 handicapped children already receiving services.

22 Because of the mandate to serve these children they are
23 now receiving services before other children who have not been
24 referred under this program. The only exception is those in
25 crisis such as suicidal youth. Therefore, other children in need
26 have increasingly limited access to public mental health
27 services. As more and more AB 3632/882 referred children enter
28 the system, the costs under this mandate are increasing, and
available services to other children are decreasing. Projections

1 of costs for this program to the County of Riverside for fiscal
2 year 1987/88 are at least \$1.5 million, but may be as much as \$2.3
3 million as more and more children enter the system. In
4 comparison, the State has allocated \$513,165 to the County of
5 Riverside for this program for fiscal year 1987/88. The costs to
6 the county in excess of the above-mentioned \$513,165 will come out
7 of the county's regular Short Doyle allocation.


8 The most intensive services such as day treatment
9 (minimum 3 hours a day, 2 - 4 days a week) are now accepting only
10 AB 3632/882 children. Thus, other children with serious emotional
11 problems such as abused children, children who are repeated
12 failures in adoptive placement, some psychotic children, multi
13 problem children, children ordered into treatment by the court,
14 and children on juvenile probation have the intensive day services
15 unavailable to them. They are also on waiting lists for very
16 limited outpatient resources. Once they do receive a mental
17 health evaluation they have a long wait for ongoing therapy in
18 some parts of the county. More treatment is now being provided i
19 groups with less and less resources available to provide
20 individual and family therapy. Children who are showing the
21 beginnings of serious problems, often younger children, are
22 virtually excluded from services. As resources focus on the one
23 population there is also less publicizing of the services and less
24 facilitating of referrals of needy children from the general
25 community, and from other agencies.

26 County Mental Health has found it necessary to focus
27 services on the AB 3632/882 population because of the State and
28 Federal mandates but even with that focus, has been unable to keep

up with the demand for service by that population much less by other needy children.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Riverside, California on 11/17/87.


JOHN J. RYAN
Director, Riverside County
Department of Mental Health

1101P



CALIFORNIA STATE DEPARTMENT OF EDUCATION

721 Capitol Mall

Sacramento, CA 95814-4785

CSM Attachment C

November 24, 1987



Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814

RE: CSM-4282
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

Basis of Claim

Santa Clara County is claiming a state mandated cost of \$3,081,000 associated with the provision of mental health services for handicapped children in 1986-87. Specifically, Santa Clara County claims that it was required to provide mental health assessment, case management, and treatment for children who were residents of the county.

Discussion

Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 CAC Section 60000 et.seq. shifted the responsibility of providing psychotherapy and other mental health services to pupils with exceptional needs, from the State Department of Education (SDE) to the Department of Mental Health (DMH).

To facilitate this shift in responsibilities, \$1.6 million was appropriated from the General Fund to DMH during the period from March 1, 1986 -June 30, 1986 for the purposes of assessment and participation in IEP meetings. An amount of \$2 million was appropriated in the 1986-87 Budget Act to the DMH to provide non-educational services, such as assessments, treatment and case management services; and an additional \$2.7 million was transferred from the SDE to the DMH for assessments and mental health services. It was determined at the time that this level of funding was sufficient to cover the transferred services.

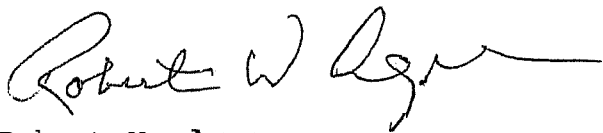
At issue in Santa Clara County's claim is whether the funds made available to' mental health agencies were in fact sufficient to support the required psychotherapy and other mental health services. In evaluating this claim, we would ask the Commission to consider the following clarifying points:

- o The costs of treatment to children who were served by **mental** health agencies prior to the passage of these statutes, are not new or increased costs.
- o "Medication Monitoring" is not an educationally related service and is not a mental health responsibility pursuant to Chapter 1747, 1984 Statutes, Chapter 1274, 1985 Statutes, or Title 2.
- o County mental health agencies still determine who they will serve and the frequency of the service.
- o School districts and county mental health agencies share the responsibility for serving all handicapped pupils pursuant to their **IEPs**; mental health agencies are responsible for those pupils with more severe mental conditions only after the local educational agencies have exhausted their resources.
- o County mental health agencies may still use private insurance provided that the premiums are not increased or lifetime benefits reduced as a result of such usage.
- o The statutes do not mandate the use of private therapists; if private therapists are used, it would be the mental health agency's decision.
- o County mental health agencies need not assess pupils, but may rely upon current assessments. The students referred to mental health agencies have substantial assessment data in their files, and assessments performed by mental health may in fact be duplicative and unnecessary.

In summary, county mental health agencies are in fact required to provide services to pupils that were not previously required of them; however, funds were appropriated, and transferred to DMH in an effort to cover the costs incurred for such services.

If you have any questions regarding the above information, please contact Janet Sterling of my staff at (916) 322-1645.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert W. Agee", followed by a horizontal line.

Robert W. Agee
Deputy Superintendent for Field Services
(916) 324-5923

RWA/JS/dg

Memorandum

November 30, 1987



To: Stephen R. Lehman, Assistant Executive Director
Commission on State Mandates

From: Department of **Finance**
DIRECTOR'S OFFICE

Subject: Claim No. CSM-4282 from the County of Santa Clara based on Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Administrative Code, Division 9, relating to handicapped and disabled students

This claim is based on Chapter 1747/84, Chapter 1274/85 and Division 9 of Title 2 of the California Administrative Code which revise laws affecting the provision of services to handicapped and disabled students. The claimant alleges that, with the passage of the legislation cited above, the County of Santa Clara was required to undertake assessments of handicapped children, assume case management responsibilities and undertake treatment of children for which it was previously not responsible.

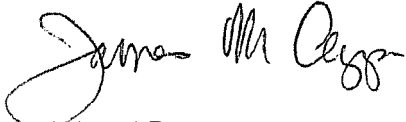
The County of Santa Clara further alleges that the cost of providing the above mentioned services falls outside the negotiated net amount contract between the the claimant and the State Department of Mental Health (SDMH) for provision of services pursuant to the Short-Doyle Act. For the 1986-87 fiscal year, the County of Santa Clara is claiming net costs in the amount of \$3,081,000.

The Department of Finance has reviewed this claim and concludes that Chapters 1747/84 and 1274/85 and the resultant regulations do not impose a new program or higher level of service upon local mental health agencies for which reimbursement should be provided through the Commission on State Mandates' claims process. This position is based largely on the fact that, although the responsibility for certain functions was transferred from schools to counties, \$2,700,000 was transferred from the State' Department of Education (SDE) to the Department of Mental Health budget in the 1986-87 fiscal year expressly for the purpose of funding the activities required to be transferred from SDE to SDMH and that an additional \$2,000,000 was appropriated to SDMH for purposes of the program.

Whether or not the amount of funds provided for program purposes was adequate and whether or not any unfunded portion of the program is subject to the provisions of the negotiated net amount contract between the claimant and the SDMH are issues which may best be resolved through negotiations between those two parties. Another issue which should be similarly resolved is whether or not the number of clients, level of activity and types of activities claimed by Santa Clara County are appropriate, given that many requirements of the new program overlapped with those of pre-existing programs.

We would also point out that the subject matter of this claim, i.e., the provision of services under Individualized Education Programs (IEP) is essentially the same as the basis of the pending lawsuit over the Board of Control's decision that the State's special education program is a reimbursable State mandate. In view of that pending litigation, the Commission may want to consider whether it is appropriate for them to proceed with and ultimately render a decision on this claim.

If you have any questions concerning this recommendation, please contact James M. Apps at (916) 323-6368.



for- Richard Ray
Program Budget Manager

Attachments

LR: 1566L

cc : Phillip T. Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office
Glen Beatie, State Controller's Office
Lynn Whetstone, Department of Mental Health
Robert Agee, Department of Education

DECLARATION OF JAMES M. APPS
DEPARTMENT OF FINANCE
CLAIM NO. CSM 4282

1. I am currently employed on the State of California, Department of Finance, am familiar with the duties of the department and am authorized to make this declaration on behalf of the department.

2. Section 6, Article XIII B of the California Constitution reads as follows:

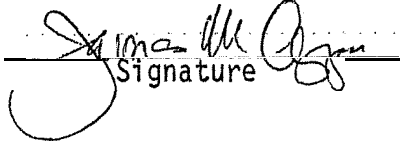
Whenever the Legislature or any State agency mandates a new program or high level of service on any local government, the State shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected;
- (b) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

3. In its "Local Cost Estimate" for AB 3632 prior to its enactment as Chapter 1747/84 (See Attachment 2), the Department of Finance concluded that there was no reimbursable mandate in that legislation.

"I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

11/30/87 Sacramento CA
Date and Place


Signature

LR:1566L

	NO.	ISSUE DATE	BILL NUMBER	Attachment 2
Local Cost	2	AUG 10 1984	AB 3632	
ESTIMATE		AUTHOR	DATE LAST AMENDED	
Department of Finance		W. Brown, et. al.	August 7, 1984	

I. SUMMARY OF LOCAL IMPACT:

1. **Requires** various state agencies to coordinate the delivery of designated instruction services to handicapped children.
2. Requires local agencies to report the fiscal impact resulting from this bill through appropriate State agencies to the Department of Finance.

I I. SUMMARY OF LO&AL COST:	1983-84	1984-85	1985-86	1986-87	
(Local Agency(s) Affected)	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	<u>Amount</u>
RE IMBURSABLE:	--	--	--	--	
NON -RE IMBURSABLE:	--	--	--	--	

I II. ANALYSIS:

A. Introduction

Current law (Section 56363 of the Education Code) provides that local school agencies shall provide designated instruction and services as specified in the individualized education program for handicapped **children**. Such services include but are not limited to: language and speech development and remediation, audiological services, orientation and mobility instruction, instruction in home or hospital, adapted physical education and others., This bill provides that this designated instruction and services shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare, and they shall ensure **utilization** of all State and Federal resources available to provide handicapped children with a free appropriate public education.

The bill also provides that the Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related **services** and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program.

In addition, the bill lists specific duties and responsibilities of the State Departments of Health Services, Social Services, Developmental Services, Rehabilitation, and the Mental Health. The bill also requires the Director of Finance to review all applicable General Fund items of appropriation for local assistance for social, mental health, developmental and health services for children administered by each department and transfer if necessary, **funds**, including funds which may be allocated to local educational agencies, between these items of appropriation, to cover the costs of services provided pursuant to the bill.

(continued)

PREPARED	Date * REVIEWED	Date * APPROVED	Date
<i>Frank J. J...</i>	8-10-84 *	<i>James W. M...</i>	8-10-84
LP:1029A/261001			

W. Brown, et. al.

August 7, 1984

AB 3632

III. ANALYSIS (continued)

The bill also requires that each local agency affected by chapter 26 (commencing with Section 7570) Division 7 of Title I of the Government Code as added by this bill shall identify expenditures which were previously borne by the agency which, as a result of enactment by this bill were shifted to another agency, or shall identify its responsibility for expenditures which have been acquired due to this bill. The local agency shall report any of these shifts in responsibility through appropriate state agencies to the Department of Finance,

B. Working Data

1. A representative from Los Angeles City Schools indicates that the bill would not result in additional costs to schools because current provisions require school agencies to provide designated instruction and services to handicapped children. The purpose of the bill is to require the Secretary of the Health and Welfare Agency to share the responsibility with the Superintendent of Public Instruction for providing specified services because under current provisions some children have not received adequate levels of service from the various state agencies.
2. A representative from the State Department of Health Service (DHS) indicates that this bill would result in major costs because the Secretary of Health and Welfare would be responsible through the DHS for providing health services to handicapped students.
3. A representative from the County of Los Angeles indicates that this bill would not result in any additional costs to the county because any services which the county may have to provide to handicapped students would be paid for by the State. The reporting requirements specified by this bill would not impact the county.
4. Section 2253.2 (c) 3 of the Revenue and Taxation Code reads as follows:

The Board of Control shall not consider, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, any claims submitted by a local agency or school district if the claim is for two hundred dollars (\$200) or less.

C. Assumption

Local agencies statewide will be able to provide the appropriate State agencies expenditure information at a cost of less than \$200. Therefore, such local agencies would not be eligible to submit claims for reimbursement to the State Board of Control.

D. Conclusion

Based on the above analysis, we conclude that this bill does not contain a reimbursable mandate as defined in Article XIII B of the California Constitution and Sections 2231 or 2234 of the Revenue and Taxation Code. The "general" disclaimer in the bill is appropriate.

DEPARTMENT OF MENTAL HEALTH

1500 - 9th STREET
SACRAMENTO, CA 95814

(916) 323-8173



November 30, 1987

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 "K" Street, Suite 1150
Sacramento, CA 95814

Dear Mr. Lehman:

In response to your August 27, 1987 letter to the County of Santa Clara regarding the county's test claim (CSM-4282) for payment of costs incurred pursuant to Chapter 1747 of the Statutes of 1984 (AB 3632), Chapter 1274 of the Statutes of 1985 (AB 882) and Division 9 of Title 2 of the California Administrative Code, the Department of Mental Health provides the following information and recommendations. As requested, our response will specifically consider whether these statutes and regulations have imposed a new program upon counties or a higher level of service in an existing county program.

BACKGROUND

Under The Education for All Handicapped Children Act of 1975 (20 U.S.C. §1401 et seq.) (hereafter Public Law 94-142), each participating state must make available to all handicapped children, as defined, within specific age ranges and timelines, a free appropriate education. Section 300.4 of Title 34 of the Code of Federal Regulations defines "free appropriate public education" as "Special education under public supervision and direction, and without charge" An "individualized education program" (IEP) must be established for each eligible handicapped child. An IEP includes special education and related services needed by the child as determined by the child's current evaluation.

California has been a participant in the program described by Public Law 94-142 since 1980. Chapter 797 of the Statutes of 1980, which became law on July 28, 1980, restructured and added code sections implementing

sections of the Education Code relating to California's Master Plan for Special Education statewide. (See Sections 56000 et seq. of the Education Code.)

Chapter 1747 of the Statutes of 1984 (hereafter Chapter 1747), Chapter 1274 of the Statutes of 1984 (hereafter Chapter 1274), and implementing regulations, Sections 60000 et seq. of Title 2 of the California Administrative Code, changed the administrative manner in which this state provides educationally related services to handicapped children. These statutes and implementing regulations shifted roles and responsibilities at the county level among the schools, welfare departments, and mental health departments. Among other things, these statutes added the provisions of Chapter 26.5 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code entitled "Interagency Responsibilities for Providing Services to Handicapped Children. " The provisions of Chapter 26.5 require county mental health programs to: act as the lead case manager when a child's individualized education program calls for residential placement (sub. (1), Sec. 7572.5 Gov. Code); if designated by the State Department of Mental Health, provide psychotherapy or other mental health services when required in a child's individualized education program (Sec. 7576 Gov. Code); and, provide specified assessment services (see Sees. 7572, 7572.5, and 7582 Gov. Code and Sec. 18 of Chapter 1274 of the Statutes of 1985).

In reviewing the claim of Santa Clara County, the Department of Mental Health makes the following observations:

I. Costs claimed by the County are costs mandated by the federal government

Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 U.S.C. 794) requires that "handicapped individuals" shall not be subjected to discrimination under, excluded from participation in, or denied the benefits of "any program or activity receiving Federal financial assistance". Regulations promulgated under

the authority of Section 504, specifically 34 CFR 104.33, require that recipients of federal funding provide "a free appropriate education" consisting of "special education services . . . that meet the needs of handicapped persons as adequately as the needs of non-handicapped persons. "

Consequently, it would appear that any local agency receiving federal assistance for programs which serve handicapped individuals (which would include educationally related services) would have to provide some unique services to handicapped individuals in order to continue receiving federal funding.

Section 17513 of the Government Code provides, in pertinent part, that: "... 'Costs mandated by the federal government' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state . . ."

Clearly, noncompliance with Section 504 and implementing regulations and Public Law 94-142 would result in "substantial monetary loss" for the State since all federal funding would be lost and, therefore, come within the definition of "costs mandated by the federal government " set forth in Section 1751.3.

I I . Chapters 1747 and 1274 and their implementing regulations affirmed for the State that which had been declared existing law by actions of the courts

There are numerous cases at the federal and state level, which were heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973, that would seem to indicate that handicapped individuals have a right to certain special services under the equal protection provisions of the Constitution of the United States (see, for example Pennsylvania Assn. for Retarded Children v. Commonwealth, (1971) 334 F.Supp. 1257 and Mills v. Board of Education of District of Columbia, (1972) 348 F.Supp. 866.)

Therefore, the implementation of Chapters 1747 and 1274 merely affirm for the state that which has been declared existing law by actions of the court.

III. Costs claimed by the County are not costs mandated & by the State, but costs incurred by contractual obligation.

Any increased costs incurred by the county as a result of the enactment of Chapters 1747 and 1275, and their implementing regulations, are pursuant to a contractual agreement, and not costs mandated by the state.

As a general rule, community mental health services are provided pursuant to an annual Short-Doyle plan. Section 5705 provides that a county's annual Short-Doyle plan is a contract between the county and the state. Services provided in accordance with an annual Short-Doyle plan are reimbursed at actual cost.

In 1983, the statutes were amended (Sec. 5705.2 Welf. & Inst. Code) to allow the Director of Mental Health to negotiate net amount contracts between counties and the State Department of Mental Health in lieu of the annual Short-Doyle plan and budget (Chapter 1207, Statutes of 1983). The negotiated net amount contracts are not audited to cost and the counties are able to utilize any savings that occur pursuant to the negotiated net amount contract.

Provisions of a negotiated net amount contract must include, among other things, assurance of an adequate quality and quantity of services and an assumption of the financial risk by the County in providing all mental health services to the population described and enumerated in the approved contract within the negotiated net amount.

For the fiscal year 1986-87, Santa Clara County entered into a negotiated net amount contract with the State to render mental health services in Santa Clara County. In that contract the language clearly states that the County has agreed to provide services in accordance with the following principal: "(1) a continuum of mental health services which are required by statute . . ." The provision of services to children is set forth in Exhibit D.

Therefore, the provision of needed services pursuant to Chapters 1747 and 1274 is within the scope of the contract.

Thus, any cost for mental health services to minors, which is a population that must be provided for (Sec. 5651.1 Welf. & Inst. Code), that are not reimbursed from the negotiated net amount, is a financial risk the County assumed when it became a party to a negotiated net amount contract.

IV. Chapters 1747 and 1274 do not impose a "new program"

Chapters 1747 and 1274 do not clearly constitute a new program, but, instead, are a redelineation of the responsibilities of carrying out an existing local program, a program that was implemented by statute at the local level in 1980, as discussed above. (See Sections 56000 et seq. of the Education Code.) While Chapters 1747 and 1274 specified certain responsibilities of community mental health programs in providing services to handicapped students, community mental health programs were already providing assessments and mental health treatment for many handicapped children in carrying out their responsibilities under the Short-Doyle Act (Section 5600 et seq. of the Welf. & Inst. Code). In fact, the Santa Clara County claim notes that fully 215 out of 336 children receiving treatment were known to the mental health system prior to fiscal year 1986-87.

In recognizing that local mental health programs now have the responsibility for providing those mental health services to special education children which were previously paid for by the schools, Section 16 of Chapter 1274 required the transfer of funds, reported by local education agencies as having been previously spent by them for mental health services from the State Department of Education to the Department of Mental Health.

V. These statutes and regulations do not impose a
"higher level of service"

The Department of Mental Health acknowledges that the statutes may have resulted in an increase in the number of children being assessed as needing mental health treatment due to the shift in responsibilities among county agencies. The Auditor General issued a finding to this effect in April 1987, when he reported that the number of special education students referred for non-educational services has increased since March 1, 1986 (Report No. P-640, page 17). A significant growth was recognized in the funding level in the 1987-88 budget. We do not agree, however, that this constitutes a mandate for a higher level of service.

Specifically, Santa Clara County argues that flexibility has been lost with regard to this program, since mental health services must be provided regardless of the severity of the mental condition and regardless of funding limitations.

However, Section 7572 states that:

"Whenever a service is to be considered for inclusion in a child's individualized education program (IEP), the local education agency shall invite the responsible public agency representative to meet with the IEP team to determine the need for the service. "

It is clear from these provisions that counties do maintain some flexibility as to who is served and what services are received. The local mental health representative will provide input to the IEP team as to the need for mental health treatment services.

The County claims that under Chapters 1747 and 1274, and implementing regulations, it may be required to pay for mental health services rendered by private therapists who are not county contract providers. Section 7576 of the Government Code allows a county:

"... to provide psychotherapy or other mental health services, when required in a child's IEP either directly or by contracting with another public agency, qualified individual or a state certified nonpublic, nonsectarian school or agency. "

Therefore, the County continues to maintain a prerogative as to how a required service will be provided and in no way is required to pay for services unless there is a contractual obligation to do so.

In conclusion, the Department of Mental Health does not conclude that Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985, and Division 9 of Title 2 of the California Administrative Code mandate a new program or a higher level of service on county government.

VI. State reimbursement is already provided to Santa Clara County for these services

The Short-Doyle Act specifically requires that mental health services be provided to children. Moreover, this act also includes maintenance of effort requirements with regard to children's services. Specifically, Section 5704.5 of the Welfare and Institutions Code provides that counties cannot decrease their proportion of mental health expenditures for children unless they can demonstrate that the need for such services has decreased. Further, Section 5704.6 requires that, with certain exceptions, counties must spend 50 percent of each noncategorical augmentation for children's services until such services represent 25 percent of the county's total mental health program.

The administration and the Legislature have recognized maintenance of effort requirements in appropriating funds to implement Chapters 1747 and 1274. Moreover, the Conference of Local Mental Health Directors, which is comprised of the directors of all of the county mental health programs, has also recognized a maintenance of effort in its estimates of program costs. (See attachment A.)

In the case of Santa Clara County's claim, then, the Department of Mental Health recommends that, should the Commission determine that these statutes constitute a reimbursable mandate, at a minimum a maintenance of effort requirement should be recognized.

November 30, 1987

I hope that this information will prove useful to the Commission in making a determination as to the validity of the Santa Clara County claim for state-mandated local costs. The Department of Mental Health will also have a representative present at the January 21, 1988 hearing on this issue should additional information be required.

Should you have any questions, please contact Lynn E. Whetstone, Deputy Director for Administration, at 3-8261.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles C. Harper", written over a horizontal line.

CHARLES C. HARPER
Chief Deputy Director

cc : Jim Apps
Department of Finance

County of Santa Clara

California

December 16, 1987

Donald L. Clark, County Counsel

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814



RE: CSM-4282
Claim of the County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Mental Health Services to Handicapped and Disabled Students

Dear Mr. Lehman:

This is in rebuttal to the responses filed by the Departments of Education, Mental Health, and Finance to the Test Claim filed by the County of Santa Clara with the Commission on State Mandates for costs relating to the mandate imposed by Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; and Title 2, California Administrative Code, Division 9, relating to the provision of mental health services to handicapped and disabled students.

I. Costs claimed by the County are not costs mandated by the federal government.

The Department of Mental Health asserts that the costs of complying with Chapters 1747 and 1274 and their implementing regulations are costs mandated by the federal government. This assertion is based on the fact that Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 U.S.C. 794), together with the implementing regulations, require that recipients of federal funding provide free, appropriate, public education to handicapped children, as well as supportive services necessary for the child to take advantage of that education. It is clear under federal law that supportive services includes, in some instances, mental health services. Nevertheless, the costs claimed by the County are not costs mandated by the federal government because the program is optional, and because, if a mandate exists, it is imposed on the State or on local educational agencies, not county mental health agencies.

A. The program established by Chapters 1747 and 1274 and their implementing regulations is not a mandate of the federal government, as federal law establishes an option program, not a mandated program, even if there are substantial financial incentives for participation in such programs. To the extent that Government Code section 17513 provides otherwise, it is unconstitutional.



Letter to Stephen R. Lehman
December 16, 1987
Page 2

California Constitution Article XIII B §6 provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service

In defining reimbursable mandates, California Constitution Article XIII B §9(b) excludes "[a]ppropriations required for purposes of complying with mandates of the federal government which, without discretion, require an expenditure" by the governmental entity. A financially induced choice is not the same as a statutory requirement. City of Sacramento v. State of California (1980) 156 Cal.App.3d 182, 196; 203 Cal.Rptr. 258, disapproved on other grounds in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58; ___ Cal. Rptr. ___.

Government Code 517513 defines "costs mandated by the federal government" excludable from reimbursable mandates as:

any increased costs incurred by a local agency . . . in order to comply with the requirements of a federal statute or regulation. . . [including] costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.

As applied to this case, this statute is unconstitutional. Chapters 1747 and 1274 mandate a new or higher level of service on local government, by requiring county mental health agencies to provide certain assessment, case management, and therapeutic services. This program otherwise would be a reimbursable state mandate under California Constitution Article XIII B §6. The increased costs incurred by the County were not "required for purposes of complying with mandates of the federal government which, without discretion, require an expenditure. " Therefore, the costs are not mandates of the federal government, as defined by California Constitution Article XIII B 59.

The State could choose not to implement the Education for All Handicapped Children Act individualized education program requirements. The effect of not fully implementing the Education for All Handicapped Children Act is a loss of federal benefits. The court of appeals has held that the application of Revenue & Taxation

Code § 2206¹. (predecessor to Government Code §17513) to federal laws which merely provide financial incentives for compliance would conflict with the definition of a federal mandate contained in Article XIII B 59(b). City of Sacramento v. State of California, Id. at 198. City of Sacramento involved state legislation implementing changes to the unemployment insurance system, which resulted in increased costs to all California employers, including local government. Failure to adopt the changes would have resulted in decertification of the state's unemployment insurance program, with a concomitant loss of tax credit for the state's private employers. In determining that the changes were not federally mandated, the court stated:

. . . [California Constitution Article XIII B §9(b)] defines a federal mandate as one leaving the state or local government no discretion as to alternatives. If participation in a federal program is optional, it follows that state legislation requiring local participation involves a state mandate under article XIII B, section 6. Revenue and Taxation Code section 2206 insofar as it defines as nonreimbursable federal mandates those federal programs which make state participation optional, even if substantial financial incentives indicate the desirability of participation, is invalid under article XIII B, section 6 and 9. Id. at 198-99. (Italics in original.)

In the present case, as in City of Sacramento, failure to enact legislation to implement the federal goals would involve a loss of financial benefits. Nevertheless, it is an optional program. The detailed requirements of the Education for All Handicapped Act-- including mental health assessments and supportive services --are not generally required by federal law.

¹. Revenue & Taxation Code §2206, as amended in 1980, provided in part:

. . . "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. . . [and] does not include costs which are specifically reimbursed or funded by the federal or state government OK programs or services which may be implemented at the option of the state, local agency, or school district.

This language is substantially similar to the language of Government Code section 17513.

- B. If the services described in Chapters 1747 and 1274 and their implementing regulations are federally mandated, the mandate is not imposed on county mental health agencies but on the State or on local educational agencies. Therefore, to the extent that Chapters 1747 and 1274 and their implementing regulations impose requirements on local mental health agencies, they constitute a state mandate.

If a state decides to implement the federal Education for All Handicapped program, nothing in federal law requires the State to impose on county mental health agencies the responsibility for providing mental health assessments, treatment or case management for handicapped students pursuant to the federal individualized education program standards. The state could impose the responsibilities on local school districts, as it did before the passage of Chapter 1747.

Federal law requires states which receive federal funding to have in place a program applying to the state as a whole. See 34 Code of Federal Regulations 5300.1 et seq. It is the State that has the responsibility. Federal regulations generally do not establish which state or local agency will be responsible for certain functions. States have flexibility in designing their programs. Generally, however, where federal regulation do identify a particular local or state agency, it is agencies responsible for education which are identified. For example, 34 C.F.R. §300.600(a) provides:

- The State educational agency is responsible for insuring:
- (1) That the requirements of this part are carried out; and
 - (2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:
 - (i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and
 - (ii) Meets education standards of the State educational agency (including the requirements of this part).

When the state chose to transfer to county mental health agencies a portion of the responsibilities which local education agencies had for handicapped children, it imposed a mandate on counties.

- II. Chapters 1747 and 1274 and their implementing regulations do not merely affirm for the State that which had been declared existing law by actions of the courts.

Department of Mental Health asserts that implementation of Chapters 1747 and 1274 merely confirm for the State that which has been

declared existing law by actions of the court. That is not the case. Absent this legislation, no existing court decisions impose on counties the responsibility of providing services which, essentially, relate to the provision of educational services.

Court decisions at the federal and state level heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973 establishing the rights of handicapped individuals were decided under due process and equal protection theories. Mills v. Board of Education of the District of Columbia (1972) 348 F.Supp. 866 held that the Board of Education, by failing to provide special education to certain disturbed children, denied due process to the children and the class they represented. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1971) 334 F.Supp. 1257 involved the equal access to educational services for retarded children. Neither case involved the imposition on local mental health agencies of responsibilities to provide services supportive to the educational requirements of handicapped children.

The County is not providing public education for the children generally served through the individualized education program. This is a responsibility of the local educational agencies. To the extent existing court decisions may have held that special educationally-related services to handicapped children are required, the requirement was imposed on local education agencies, not county mental health agencies.

III. Costs claimed by the County are mandated by Chapters 1747 and 1274 and their implementing regulations, not by contractual obligation.

The increased costs were incurred by the County as a result of Chapters 1747 and 1274 and their implementing regulations, not as a result of the Short-Doyle negotiated net amount contract. The responsibilities are mandated by statute and exist regardless of and prior to the contract.

Moreover, in the negotiated net amount contract for the Fiscal Year 1986-87, the County did not contract to provide services mandated by Chapters 1747 and 1274. The only references to the program in the contract are on Exhibits B and F, which set forth the \$222,955 allocation to the County specifically for this program. Exhibit D, relates to children's services in general, not specifically to services required by Chapters 1747 and 1274.

In its assertion that the services are required by contractual obligation, the Department of Mental Health relies solely on the

following general language from the twenty page contract:

28. Program Principles

The State and County agree that the following represents the program principles of the local mental health program:

- a . A continuum of mental health services required by statute and which are accessible and acceptable to the county population.

No other language from the body of the contract can be construed as imposition through contract of the responsibilities imposed by Chapters 1747 and 1274. Even this language does not constitute contractual acceptance of those responsibilities. In context, it is clear that the "mental health services required by statute" are those required by the Short-Doyle Act, Welfare & Institutions Code Section 5600 et seq.

Furthermore, Welfare & Institutions Code section 5705.2, which authorizes negotiated net amount contracts, states:

- (a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given in preference in contracts for services under this division. (Italics added; referring to Part 2 of Division 5 of Welfare & Institutions Code.)

Clearly, the negotiated net amount contract requires only Short-Doyle services. Chapters 1747 and 1274 are codified in. Chapter 26 of Division 7 of Title 1 of the Government Code. This program is separate from the Short-Doyle program of Welfare & Institutions Code section 5600 et seq. Clearly, the provision of needed services pursuant to Chapters 1747 and 1274 is not within the scope of the negotiated net amount contract between the County and the State.

IV. Chapters 1747 and 1274 and implementing regulations impose a "new program" on counties.

California has participated in the Education for All Handicapped Children Act program since 1980. Chapter 797, Statutes of 1980. It is true that the program is not new to California. However, prior to the passage of Chapter 1747, none of the responsibilities outlined in Chapters 1747 and 1274 were delegated by the state to counties. Rather, it was local educational agencies which had the responsibility for providing mental health assessments, treatment, and case management for handicapped children. Chapters 1747 and 1274, therefore, clearly impose a new program on counties.

In fact, there has been a recognition that county mental health agencies are, as a result of Chapters 1747 and 1274, providing mental health services which previously were provided through local educational agencies. Funds reported by local educational agencies as previously having been spent by them for mental health services were transferred from the State Department of Education to the State Department of Mental Health and then allocated to the counties. However, the amount of the allocation received by the Santa Clara County mental health agency grossly fails to compensate the County for the cost of the new services which it must provide.

Additionally, the number of referrals from local educational agencies has increased substantially now that the local educational agency is responsible only for the identification of handicapped students, and not for their mental health assessment and treatment. It appears that, prior to the passage of Chapter 1747, children in need of mental health services in order to take advantage of free, appropriate education were under-identified.

Prior to the passage of Chapter 1747, the County mental health agency did not conduct individualized education assessments, did not attend individualized education program team meetings, did not defend individualized education program mental health recommendations in mediations, administrative hearings or courts, did not provide case management for all seriously emotionally disturbed children receiving out-of-home placement, and did not provide all mental health treatment services required in specific individualized education programs for the handicapped students residing in the County. The County mental health agency did perform some mental health assessments for some handicapped children. These assessments, however, would not be geared specifically to the educational needs of the children. The treatment offered by the County was not necessarily that which was required by a child's individualized education program.

Clearly, the population of children receiving mental health services through county mental health agencies prior to the passage of Chapter 1747 overlaps with the population of children who were receiving mental health services pursuant to individualized education programs. The two populations, however, were not identical. Many handicapped children received assessments and/or treatment from private agencies or therapists. Many children receiving mental health services from county mental health agencies did not have individualized education program recommendations for mental health services or did not have individualized education programs at all. Even for children with individualized education program mental health recommendations, the services provided by county mental health agencies were not necessarily the services required by the individual programs.

The overlap in the two populations was such that in Fiscal Year 1986-87, 215 of the 336 children receiving treatment pursuant to Chapters 1747 and 1274 had previously been known to the County mental health system. To some extent, some of the 215 identified children had been receiving mental health services from the County mental health agency. To some extent, the services provided both fulfilled the recommendations of individualized education programs and were required by the County's negotiated net amount contract with the State.

The County concedes that it has responsibility for providing some mental health services to children under the Short-Doyle Act and the negotiated net amount contract with the State, including some services which are, in addition, required by Chapters 1747 and 1274 in particular cases. It cannot be said, however, that the services received by the 215 children previously known to the County mental health agency were the responsibility of the County in the absence of Chapters 1747 and 1274.

The Short-Doyle Act does not set forth with precision the mental health services which counties must make available to their residents. Children do constitute a population for which counties are required to provide mental health services under Welfare & Institutions Code section 5651.1, but the statute is silent as to the levels and specific types of services to be provided. County has committed to children's services funds in excess of the requirements of Welfare & Institutions Code section 5704.5.

In years prior to Fiscal Year 1986-87, the County of Santa Clara had substantial overmatch which, in large part, funded the services for children. Some services to the 215 children were not required by either statute or negotiated net amount contract, but were voluntary, funded by the County's voluntary overmatch. To the extent that the County no longer has the option of determining whether it will continue providing this voluntary service, Chapters 1747 and 1274 impose a new mandate regarding services to these children.

Prior to the passage of Chapter 1747, the County had flexibility in determining what mental health services would be provided to which children. The County has lost this flexibility with regard to handicapped children.

Prior to the passage of Chapter 1747, the County had the flexibility of deciding to overmatch or to fund mental health services at the minimum level. While it can still decide to fund at the minimum level, it cannot proportionately reduce services to handicapped children which are required by Chapters 1747 and 1274. As a result, if the County were to reduce its overmatch, other children's programs would bear an increased reduction in funding and the County

would be at risk of failing to meet its obligation to provide a continuum of mental health services to children.

The impact of the mandate of Chapters 1747 and 1274 on other children's programs in counties which do not overmatch is graphically illustrated by the supporting declaration filed by the County of Riverside. Children receiving services pursuant to Chapters 1747 and 1274 are receiving treatment in priority to other children in need of mental health services. Since Riverside does not overmatch, and the funds for children's services are limited, less services are available for other children.

In Riverside County, the list of children no longer able to have access to certain services is appalling. Children going without services include abused children, children with mental health needs who have failed multiple placement attempts, delinquent children who are ordered into treatment by the courts or who are on probation. Other children who are beginning to show signs of serious problems also are denied access to services. In effect, Riverside County can no longer fulfill its Short-Doyle obligation to children in general. The only reason this has not happened in the County of Santa Clara is that the County has contributed voluntary overmatch of approximately five million dollars.

v. Chapters 1747 and 1274 and implementing regulations impose a higher level of service on the counties.

Chapters 1747 and 1274 and their implementing regulations impose a higher level of service on the counties, as discussed in Section IV, above .

Also, counties have in large part lost their ability to charge for the services rendered. It may no longer charge parents for services rendered, nor may it require parents to submit insurance claims if payment of the claims would result in an increase in premiums or a decrease in annual or lifetime benefits. This is a substantial loss, as many of the handicapped children referred for assessment in Fiscal Year 1986-87 either are covered by insurance or have parents with ability to pay for the services. In fact, a large number of the new referrals are from the wealthier school districts in the County, involving children who otherwise would not be receiving services through the County either free or at no cost.

As discussed in the original claim and in Section IV. above, the County has lost a great deal of flexibility with the imposition of Chapters 1747 and 1274 responsibilities. The Department of Mental Health asserts that counties retains flexibility "as to who is served and what services are received" since counties are involved in the I.E.P. process and provide input to the I.E.P. team. To characterize this as flexibility is to misunderstand the program.

Counties are required to perform professional mental health assessments. If the professional determines that a child meets the criteria for receiving mental health services pursuant to the individualized educational program, the professional must recommend the treatment necessary for the child to benefit from a free, appropriate education. Counties must make appropriate recommendations and must provide the recommended mental health treatment. Counties cannot "decide" that a child meeting the criteria will not receive services. Similarly, counties cannot "decide" to offer less services or less frequent services than is required to meet the children's needs for free, appropriate education.

Moreover, it is not simply the recommendations of county mental health agencies which determine treatment. The federal and state statutory schemes contain certain due process procedures and rights, including mediation, administrative hearings, or judicial review. It may be a court or administrative law judge who determines what treatment is required. Although it has not yet occurred in Santa Clara County, it is possible that an administrative law judge or court may order that mental health services be provided by private therapists. Furthermore, the County mentalhealth agency itself may, in certain cases, have to recommend private therapists. Chapters 1747 and 1274 impose an inflexible requirement to provide recommended services. There is no provision for the County to fail to do so simply because it and its contract agencies do not have the expertise necessary to provide such treatment.

The County concedes that, under Chapters 1747 and 1274 and their implementing regulations, county mental health agencies are responsible only for children with more severe mental or emotional conditions, and only after the local educational agencies have exhausted their resources. In fact, local educational agencies are to make referrals to county mental health agencies after they have exhausted their resources.

The County concedes that county mental health agencies may, to some extent and in some cases, rely on existing assessments performed for non-individualized education program purposes or performed by non-County professionals. Nevertheless, it remains the responsibility of the County mental health agency to ensure that an assessment is performed which meets the standards imposed by Chapters 1747 and 1274 and their implementing regulations. These issues should be addressed by the Commission when it establishes parameters and guidelines, after it has determined that a mandate is imposed.

- VI. The costs of complying with Chapters 1747 and 1274 and their implementing regulations are not reimbursed by general Short-Doyle funds. Alternatively, the costs of complying with said provisions are reimbursed by general Short-Doyle funds only to a limited extent.

The County concedes that it is required to commit a certain level of its general Short-Doyle allocation to mental health services for children. However, the County is required to provide a continuum of mental health services, from prompt evaluation and care of persons with acute disabling symptoms to community programs which enhance the ability of the general population to cope with stressful life situations. Welfare & Institutions Code section 5705.2(f). Obviously, the population of children eligible to receive this continuum of services is broader than the population of handicapped children needing mental health services in order to benefit from a free, appropriate education.

The County receives a specific allocation in its Short-Doyle negotiated net amount contract for the costs of Chapter 1747 and 1274. In Fiscal Year 1986-87, that allocation was \$222,955.

The State Department of Mental Health asserts that, in addition to the specific State allocation for this program, the County has been reimbursed for the costs of this program through general Short-Doyle funds. As discussed in Section II., above, the services required by Chapters 1747 and 1274 are not covered by the Short-Doyle negotiated net amount contract between the County and the State.

Except for the specific dollar allocation, no amount of Short-Doyle funds should be considered as reimbursement for the costs of this program. Under the negotiated net amount contract, the County agrees to provide a certain level of services in exchange for receiving State funding. The County assumes the risk that the cost of the services will exceed the net amount of funding, and the State assumes the risk that the services funding will exceed the costs of the services. If the County is able to provide the required services at a cost less than the amount of the contract, the County is entitled to keep any savings. The services required by Chapters 1747 and 1274 are not required by the Short-Doyle negotiated net amount contract. If the funding of the mandate imposed by Chapters 1747 and 1274 results in a Short-Doyle savings, the County is entitled under the contract to retain the savings.


In the alternative, if the Commission determines that general Short-Doyle funds may provide some reimbursement for the costs of complying with Chapters 1747 and 1274, only a portion of the general Short-Doyle funds can be considered as reimbursement for this program. Since the County is required to provide a broad continuum

Letter to Stephen R. Lehman
December 16, 1987
Page 12

of services, the only amount of the general Short-Doyle funds which can be considered as reimbursement is the amount of general State Short-Doyle children's services funds (90% of children's services funds less voluntary overmatch or, in the alternative, less a proportional share of the voluntary overmatch) which exceeds the amount required to provide the continuum of mental health services. For purposes of this calculation, the minimum level of "continuum of mental health **services**" which is required by the Short-Doyle Act, disregarding the additional requirements of Chapters 1747 and 1274, must be determined.

Respectfully submitted,

DONALD L. CLARK
County Counsel


Susan A. Chapman
Deputy County Counsel

cc: Board of Supervisors
Sally Reed, County Executive
Ken Meinhardt, M.D., Director Mental Health
Fred Archer, SB 90 Coordinator



Senate California Legislature

REPLY TO:

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STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445-6747

☒ DISTRICT OFFICE
830 MENLO AVENUE
SUITE 200
MENLO PARK, CA 94025
(415) 321-1451
(408) 277-9824

STATE SENATOR
REBECCA Q. MORGAN
ELEVENTH DISTRICT

COMMITTEES:

CHAIR: SELECT COMMITTEE ON
INFANT AND CHILD CARE AND
DEVELOPMENT

VICE CHAIR EDUCATION

MEMBER: ENERGY AND PUBLIC
UTILITIES

REVENUE AND TAXATION

TRANSPORTATION

JOINT COMMITTEE ON
SCIENCE AND TECHNOLOGY

JOINT COMMITTEE FOR
REVIEW OF THE MASTER
PLAN FOR HIGHER EDUCATION

February 9, 1988

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814



RE: CSM-4282
Claim of the County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes
of 1985;
Title 2, CAC, Division 9
Mental Health Services to Handicapped and Disabled
Students

Dear Mr. Lehman:

I support the test claim of the County of Santa Clara for mental health services for handicapped and disabled students. Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985 mandate a new--and expensive--program on counties. This legislature requires counties to provide some mental health services which previously were discretionary. To an extent, the legislation deprives counties of the ability to allocate mental health resources in accordance with clinical priorities.

A county must allocate its limited resources among its responsibilities. The State is required to fund mandated programs. Without adequate funding, the requirements of Chapters 1747 and 1274 jeopardize a county's ability to meet the needs of its residents, including mental health needs of children and adults. Consequently, I urge your favorable action for this claim.

Sincerely,

Rebecca Q. Morgan
REBECCA Q. MORGAN

RQM:zim

90 91 92 93 94 95 96 97 98 99 100

§
Hearing Date: 1/28/
File Number: CSM-4282
Staff: Stephen Lehman
WP 0141s

DISCUSSION ITEM

HEARING OPTIONS FOR THE TEST CLAIM ON:

Chapter 1747, Statutes of 1984;
Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Executive Summary

Originally, the merits of this test claim were scheduled to be heard by the commission at this hearing. However, after reviewing the departmental recommendations, and doing further research, staff does not believe it is reasonable to expect the commission to adjudicate this claim at a single, regularly scheduled hearing. The issues involved in this claim are both complex and difficult, and may be impacted by the Huff v. Commission on State Mandates litigation. Also, the two statutes involved are funded, however, the Auditor General, in reviewing the sufficiency of funding determined that the Department of Education had received and reported inaccurate data. Consequently, the Auditor General was unable to determine the sufficiency of funding for Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985.

Because of the incompatibility of this test claim with a regular commission hearing, staff is presenting the commission with a list of options on how the commission may wish to proceed. In addition, the commission should note that it's counsel cannot provide the commission with legal advice on this claim because the question of a federal mandate involves the same federal laws involved in the litigation of Huff v. Commission on State Mandates.

Claimant

County of Santa Clara

Chronology.

8/17/87 Test Claim filed with the Commission on State Mandates.'

Claim Summary

Prior to July 1, 1986, the Department of Education (DOE), through the school districts and county offices of education, was solely responsible for the education and care of special education students. However, Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, CAC, Section 60000 et seq. shifted the responsibility of providing psychotherapy and other mental health services for pupils with exceptional needs from the DOE, to the

Department of Mental Health (DMH), as part of the Short-Doyle Program. Also, the responsibility of providing residential care for seriously emotionally disturbed students was shifted from the DOE to the Department of Social Services (DSS). To facilitate this transfer of responsibilities, the Budget Act of 1986 provided for the transfer of \$8.1 million of special education funds. The DMH received \$2.7 million, and the DSS received \$5.4 million. In addition, the Budget Act of 1986 allocated \$2 million to the DMH to determine if special education students need noneducational services.

The County of Santa Clara alleges that as a result of providing mental health assessments, case management, and treatment for children who are residents of the county, it has incurred unreimbursed costs mandated by the state in the amount of \$3,081,000 during the 1986-87 fiscal year. (See Attachment A)

Departmental Recommendations

As a result of this test claim, staff has received recommendations from the Department of Finance (DOF), DOE, and DMH (See Attachments B, C, & D). Both the DMH and DOF are recommending denial of the claim. DOE is neutral.

The reasons for recommending denial is based on the following reasons:

1. The statutes in question are designed to implement Federal law, specifically, Section 504 of the Rehabilitation Act of 1973, and PL 94-142, therefore, the mandates in question are federal mandates and not state mandates.
2. The statutes in question affirm for the state that which has been declared existing law by action of the courts.
3. The costs claimed are not state mandated costs, but rather costs incurred by contractual obligation, i.e., through the county Short-Doyle contract with DMH.
4. There is no new program or higher level of service.
5. Sufficient state reimbursement is already provided.

Staff Note

The commission should be aware that this claim involves the same federal mandate issue that was the basis of the Special Education test claim that was adjudicated by the Board of Control. Consequently, the commission's counsel, a Deputy Attorney General, is unable to provide legal advice and input on the commission's actions regarding this claim, because the Attorney General's Office is representing the Chairperson in the the litigation of Huff v. Commission on State Mandates.

Staff Analysis

The issues involved in this claim are both complex and difficult, and it is unlikely that the commission can adjudicate the claim in the amount of time normally set aside for a test claim a regularly scheduled commission hearing because of the testimony and documentary evidence that will need to be addressed. For example, a major issue in this claim is whether Chapter 1747/84 and Chapter 1274/85 were enacted as a result of federal law, specifically, Section 504 of the Rehabilitation Act of 1973, and Public Law (PL) 94-142. Both of these federal laws were also at issue in the Special Education test claim heard by the Board of Control. The board reached the decision that no federal mandate resulted from these federal laws. This issue may be addressed by the court in the Huff v. Commission on State Mandates suit.

A preliminary review by commission staff indicates that, under current state law, Section 504 and PL 94-142 do not appear to result in any federal mandate. This is based primarily on the Unemployment Insurance court decision, City of Sacramento v. State of California, in which the court concluded that no federal mandate exists unless the state had "no discretion" but to implement a program. (This court decision was issued subsequent to the board decision on special education.) In the case of Chapter 1747/84 and Chapter 1274/85 there appears to have been some discretion on the part of the State.

Another major issue involves the adequacy of funding for Chapter 1747/84 and Chapter 1274/85. The Budget Act of 1986 required the Auditor General to report on the costs of providing noneducational services to special education students as established by Chapter 1747/84 and Chapter 1274/85 (See Attachment E). In reviewing the reported costs, the Auditor General found the following:

The State Department of Education (SDE) received and reported inaccurate data on the costs of providing noneducational services (related services provided by noneducational agencies) to special education students for the fiscal year 1985-86. Although the SDE obtained input from representatives from the departments of Finance and Mental Health and the Legislative Analyst's Office in developing a report form for the special education local plan areas (SELPAs) to use in reporting their costs, the instructions on the types of services that the SELPAs should have reported were not clear. As a result, the SELPAs were not consistent in the data they reported, and they did not correctly compile data. Therefore, we cannot determine if the costs that were reported to the Legislature were understated or overstated.

Consequently, a major issue on this claim will be whether the claimant has actually incurred any unreimbursed costs mandated by these two statutes and/or were any unreimbursed costs the result of services not mandated by these statutes. As stated above by the Auditor General, this cannot be determined at this time because of inconsistent reporting by SELPAs. Therefore, an obvious concern of staff's is if the Auditor General is unable to determine if the requirements of these two statutes are adequately funded, how can the commission determine the sufficiency of funding?

As stated earlier, because of the complex nature of these two major issues, it is not reasonable to expect the commission to adjudicate this claim at a single, regularly scheduled hearing. Therefore, staff is 'presenting' options for the commission to consider in determining how it wishes to proceed in adjudicating this claim.

Options

A. Hear the claim at a regularly scheduled commission hearing.

Pros

1. The claim may be adjudicated in a timely manner.

C o n s

1. Substantial controversy surrounds the issue of whether Section' 504. and PL 94-142 are federal mandates. If they are found to be federal mandates, then the commission may be able to deny the claim. As stated earlier, this issue may be addressed in Huff v. Commission on State Mandates.
2. It is unlikely that the issues of a federal mandate, and sufficiency of funding, can be resolved at one hearing. If the Board of Control hearings on this issue are any indication, the commission may need to hold numerous hearings before the claim is resolved.
3. The commission may reach a finding that is contrary to that of the court in the case of Huff v. Commission on State Mandates. Should the commission find no federal mandate, it may influence the court in their decision.'

B. Assign the claim to an Administrative Law Judge (ALJ) for hearing-;

Pros

1. Staff can schedule as many hearing days as the parties feel is necessary to resolve the claim.
2. Both claimants and state agencies are held to a more formal process, including following rules of evidence, which may facilitate adjudication of the claim.

Cons

- 1 : Adjudication by an ALJ tends to be a time consuming and expensive process;
2. The ALJ may arrive at a finding that is contrary to the finding the court may ultimately reach in Huff v. Commission on State Mandates on the issue of a federal mandate existing in this program.

- C. Assign the claim to be heard by a hearing panel consisting of one or more commission members. Section 1187.2 of the commission's regulations' permits the chairperson to assign claims before the commission to a hearing panel consisting of one or more members. The members on the panel are determined by the chairperson.

Pros

1. The hearing panel can hear the claim over several days if necessary, and then report its findings and recommendations to the full commission.
2. The process is more informal than that of an ALJ, and allows the commission to remain involved in the decision making process.

Cons

1. There is substantial controversy on the issues of a federal mandate stemming from Section 504 and PL 94-142, and the sufficiency of funding for the two state statutes. These issues may take several days of hearing to resolve. This, of course, imposes a time obligation on those commissioners who will comprise the hearing panel.
2. The hearing panel may reach a finding contrary to that which may ultimately be reached by the court in Huff v. Commission on State Mandates.

- D. Postpone the hearing on the claim, until the court has made a finding in Huff v. Commission on State Mandates.

Pros

1. May avoid a conflict between the court and the commission on the issue of whether Section 504 and PL 94-142 constitute a federal mandate,
2. Having a court determination on the federal mandate issue of Section 504 and PL 94-142 will simplify the commission's process on determining the mandate issue on this claim.

Cons

1. Delays the adjudication of this test claim. It is unknown how long it will take the court to resolve the case of Huff v. Commission on State Mandates. Presumably, appeals may result from any lower court decision on this claim, and if so, it may be years before the suit is final.
2. Presumably, the claimants do not want the claim continued for such an indefinite amount of time, and may take legal action to attempt to have the commission hear the claim in a more timely fashion.

1. 在 1945 年 10 月 25 日，日本投降後，中華民國政府正式接管台灣，結束了日本對台灣的殖民統治。此後，台灣進入了一個新的歷史時期。

2. 在 1949 年 12 月，隨著國共內戰的結束，中華民國政府遷往台灣，繼續行使對台灣的主權。

3. 在 1954 年 12 月，美國與中華民國政府簽署了《中美共同防禦條約》，進一步鞏固了台灣的安全。

4.

5. 在 1971 年 10 月，聯合國大會通過了 2758 號決議，恢復了中華人民共和國在聯合國的合法席位。

6.

7. 在 1979 年 1 月 1 日，美國正式與中華人民共和國建交，同時廢止了與中華民國的《中美共同防禦條約》。

8. 在 1981 年 8 月 17 日，美國總統卡特發表了著名的「鄧白宮談話」，重申了美國對台灣政策的「三不原則」。

9. 在 1982 年 8 月 17 日，美國與中華民國政府簽署了《八一七公報》，進一步明確了美國對台灣政策的立場。

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

PUBLIC HEARING

AGENDA ITEM 9

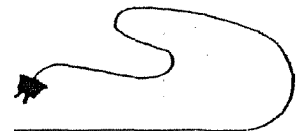
HANDICAPPED AND DISABLED STUDENTS

Thursday, January 28, 1988

10:00 O'Clock A.M.

Room 2040
State Capitol
Sacramento, California

KT
AN
RECORDING



7712 GARDEN GATE DR. • CITRUS HEIGHTS, CA 95621 (916) 969-4182

1953 DONNA KUSHEN
EDYTHE TANNER

APPEARANCESCOMMISSIONERS PRESENT

Russell Gould, Chairman
Fred R. Buenrostro
Robert Creighton
Houston Carlyle
Robert Shuman

STAFF PRESENT

Robert Eich, Executive Director
Stephen Lehman, Assistant Executive Director
Paul Dobson, Legal Counsel
Debora Fraga-Decker, Program Analyst
Rose Mary Swart, Program Analyst

ALSO PRESENT

Susan A. Chapman, County of Santa Clara
Allan P. Burdick, California Supervisors Association of
California

P R O C E E D I N G S

---o0o---

CHAIRMAN GOULD: Item 9.

MR. LEHMAN: Item 9 is a discussion item on hearing options for a test ~~claimed~~ filed by the County of Santa Clara. The issues involved in this claim are complex and difficult and may be impacted by-the Huff v. Commission on State Mandates litigation.

Also, the two statutes involved are funded. However, the Auditor General, in reviewing the sufficiency of funding, was unable to determine whether or not these two statutes in question were sufficiently funded.

Because of the incompatibility of this test claim with the regular Commission hearing process, staff is presenting the Commission with a list of options on how you may wish to proceed.

In addition, the Commission should also note that its counsel cannot provide the Commission with legal advice on this claim because of the possible impacts of the Huff v. Commission on State Mandates litigation.

MR. BUENROSTRO: So he's not billing us for this time. Right?

MR. DOBSON: As a matter of fact, Mr. Chairman, I was going to excuse myself. I understand from the Executive Director that the -- there is going to be no

1 executive session -- I have been advised this is the last
2 item on the agenda, and I could just excuse myself and
3 absent myself, just so my sitting here in silence would
4 not be any indication I'm in a position.

5 MR. BUENROSTRO: Well, we'll probably make him
6 leave, too, so it seems all right.

7 CHAIRMAN GOULD: Is that -- Mr. Eich? ..

8 MR. EICH: That's -- that's really up, to the
9 counsel. There's no problem in doing that since he can't
10 provide us any advice.

11 I don't see any problem with the Chairman's stay-
12 ing to discuss the procedure, how to handle the claim.

13 CHAIRMAN GOULD: Paul, I think that's fine. If
14 you wanted to leave, or whatever, that's fine. That would
15 be your judgment on the case.

16 MR. DOBSON: Thank you.

17 CHAIRMAN GOULD: Great. Thank you.

18 We have someone present to make a presentation,
19 so --

20 MS. CHAPMAN: Good morning, gentlemen. Susan
21 Chapman, Deputy County Counsel from the County of Santa
22 Clara.

23 The Commission staff has set forth four alterna-
24 tives for how to handle this claim. The first is to hear
25 it at a regularly-scheduled meeting. The second is to

1 assign it to an Administrative Law Judge. The third is
2 to assign it to a Hearing Panel composed of one or more
3 Commission members, and the fourth is to postpone the hear-
4 ing until the outcome on the court case of Huff v.
5 Commission on State Mandates.

6 We would ask that the Commissioners either hear
7 it at a regularly-scheduled meeting or assign it to a
8 Hearing Panel composed of Commission members.

9 This claim involves the cost of providing mental
10 health services to handicapped and disabled students, and
11 these are mental health services that are necessary in
12 order for them to take advantage of their free appropriate
13 education.

14 Prior to July 1, 1986, the Department of
15 Education, through the local education agencies, was respon-
16 sible for providing these services, and then the responsi-
17 bility was shifted over to the County Departments of Mental
18 Health.

19 Now, this is part of a larger program. There's
20 federal law. It's very complicated and specific as to
21 procedures and requirements that say that if states accept
22 federal funding they must provide free appropriate public
23 education for all students, including handicapped students,
24 and they have to provide whatever supportive services are
25 necessary for those students to take advantage of that

1 education, and that can include mental health services.

2 But note that this federal law does not mandate
3 that states adopt this program. They merely condition,
4 if we see the funding on adoption of the program, so they
5 were just going to be looking at the procedural -- how
6 to go about it.

7 I implore you to reject the last alternative
8 of postponing the claim until the outcome of Buff versus
9 Commissioners for several reasons. One, as you can tell
10 from our claim, our costs are very substantial. Santa
11 Clara County's costs are over \$3 million for one year.
12 I've heard a lot from a lot of different counties in the
13 state. Everybody is very concerned about the cost of this
14 program, so if we waited until the outcome of Huff versus
15 Commissioners, that could take years, and then we would
16 still be faced with the long process of sitting through
17 in front of the Commission.

18 Moreover, I think the issues are really different
19 than the issues in Huff versus Commissioners. I believe
20 that this does not involve a federal mandate. In Huff
21 versus Commissioners you have local education agencies,
22 and in this case you have the County Departments of Mental
23 Health.

24 There is really nothing in the federal law that
25 would impose burdens of providing supportive services for

1 education, imposing that responsibility on counties, as
2 opposed to the educational agencies who are -- who are
3 providing the education services.

4 And secondly, the argument that the federal
5 mandate fails constitutionally, as I think the staff report
6 tentatively suggests, this is an optional program, even
7 though there are substantial financial incentives for par-
8 ticipation, and it would be unconstitutional to -- under
9 the City of Sacramento v. State of California, to hold
10 that this is a federal mandate, because, as you know, the
11 Constitution definition of a federal mandate is that the
12 State is -- that the constitutional definition does not --
13 a federal mandate does not cover this if it's an optional
14 program, and this is an optional program.

15 So, on that basis, I think that we don't need
16 to wait until the outcome of Huff versus Commissioners.

17 I think that the issues, although they are diffi-
18 cult, are not so difficult that the Commission can't under-
19 stand them. The staff had raised the question about the
20 fact that the Auditor General was having a difficult time
21 determining the adequacy of funding, I think it's clear
22 in any event, even if funding would be increased through
23 the Auditor General's report, it's not going to increase
24 enough to cover our costs.

25 The reason the Auditor General was having a hard

1 time identifying costs is they are looking at local educa-
2 tion agencies and trying to separate out mental health
3 costs from education costs. If a child is in some sort
4 of residential placement that provides 'education, along
5 with mental health services, it is hard sometimes to
6 separate those costs. We don't have a difficult time iden-
7 tifying our costs. We know what our costs are in connection
8 with this program, and so I think that the Commission will
9 not have a difficult time identifying our costs either.

10 CHAIRMAN GOULD: Comments from Members?

11 MR. SHUMAN: What's your position on the staff's
12 statement that the issues are difficult and complex and
13 would consume a substantial amount of time to fully address
14 these issues?

15 MS. CHAPMAN: I think that it certainly would
16 take more than one morning of the Commission's time.

17 MR. SHUMAN: Do you have any time estimate?

18 MS. CHAPMAN: Well, I have not appeared before
19 the Commission before so I'm not really sure how -- how
20 detailed information you would need to have me present.

21 MR. SHUMAN: Well, I'm inclined, then, to agree
22 with the staff that there would be a substantial consump-
23 tion of time, that having this Commission hear it doesn't
24 seem feasible.

25 Furthermore, the prospect of having a Hearing

1 Panel doesn't appear to be any brighter, because I person-
2 ally do not have time, having other duties to

3
4 There's a question, also, of whether anyone from
5 the Department of Finance could participate on that panel.
6 Therefore, it seems to me that the -- further, I do agree
7 that waiting until the outcome of the Huff v. Commission
8 case doesn't seem to be a very appropriate option because
9 of the time involved.

10 As everyone knows, litigation can take several
11 years, and you want this thing put on the back burner,
12 and the record will be lost, and the
13 issue becomes cold.

14 It seems to me that probably the best approach
15 would be to have this referred to a Hearing Officer so
16 it can be handled expeditiously, and with the least burden
17 on the Commission, and with the greatest opportunity for
18 the -- for the Claimant to fully present their
19 and arguments.

20 MS. CHAPMAN: Our concern about that is a hearing
21 before a Hearing Officer or Administrative Law Judge would
22 be time-consuming and expensive, and we would for that
23 reason prefer it be heard by the Commission.

24 CHAIRMAN GOULD: Okay. Mr. Buenrostro?

25 MR. BUENROSTRO: Staff, have you employed an

1 ALJ in the past?

2 MR. EICH: Yes. We've used Administrative Law
3 Judges on several claims.

4 MR. BUENROSTRO: What would you estimate the
5 time to be to do that?

6 MR. EICH: I would say at least four months.
7 That's probably very conservative, actually. Probably
8 longer than that on some of them.

9 MR. LEHMAN: I don't -- not necessarily four
10 months of hearing.

11 MR. EICH: No.

12 MR. LEHMAN: Maybe one to three days of hearing,
13 and then usually an Adminsitrative Law Judge takes 'every-
14 thing under submission, and then renders a deciison within
15 a month or two.

16 MR. EICH: It usually takes a -- we usually have
17 to schedule at least two months ahead of time with them,
18 also, in order to have the judge's time,

19 MR. CREIGHTON: I take it, then --

20 CHAIRMAN GOULD: Mr. Crighton.

21 MR. CREIGHTON: I take it that it's unfeasible
22 for other members of the Commission perhaps to devote one
23 day to hearing this. I mean if that was the only thing
24 to come before the -- the Commission on that day, I take it
25 that that is -- because of your other duties, that that's

1 unfeasible.

2 CHAIRMAN GOULD: I think that would be difficult,
3 speaking for myself, and I'guess I have some. concern that
4 the timing may not be just one day, that it is a very com-
5 plex issue. We're talking about anextensive amount of
6 money, and I think you would find a large degree of
7 interest on the part of the counties to present their case
8 fully, which I think is appropriate.

9 MR. CREIGHTON: I have another question, then.
10 Now, we are going to be without legal counsel, of course,
11 for this, and I understand why. When this comes back to
12 us from the Administrative Law Judge, we are still going
13 to have to act upon that as a Commission, so we may agree
14 with the Administrative Law Judge or we may not, and we
15 certainly are not going to have any legal counsel. That
16 is something that concerns me just a bit.

17 CHAIRMAN GOULD: Okay. Mr. Eich, is that a likely
18 scenario, that we would continue to be without counsel?

19 MR. EICH: The only other option available to
20 us is to hire private counsel for advice on this -- on
21 this issue, and that is something we could consider.

22 MR. CREIGHTON: The Administrative -- don't mis-
23 understand. I'm not questioning the competency of the
24 -- the Hearing Officer who would be assigned to this. I'm
25 sure he would do a very fine job.

1 As they finally said, the bottom line is going
2 to end up here with us, no matter what he recommends to
3 us, and at that time we still don't have any legal counsel
4 when it does come before us as a body.

5 MR. SHUMAN: Well, since we have that situation,
6 whether we hear it, a Panel hears it, or a Hearing Officer
7 hears it, it seems to me that we would have that problem
8 no matter what.

9 At least with an Administrative Law Judge, we
10 do have an attorney that is hearing the matter at issue,
11 and then what the Commission decides to do is, of course,
12 another matter, but at least you have those legal issues
13 reviewed initially by an attorney who is a trained Hearing
14 Officer.

15 CHAIRMAN GOULD: Mr. Burdick, you have joined
16 us.

17 MR. BURDICK: Thank you, Mr. Chairman and Members.
18 For the record, Allan Burdick with the County Supervisors
19 Association of California, and I just wanted to point out
20 a couple of things I think to the Commission. I think
21 Member Creighton brought it back, and that is the question
22 that eventually you are going to have to hear this claim,
23 and I think that you are going to probably find that you
24 are going to have to take a considerable amount of time
25 probably at that hearing to go through this particular

1 case, particularly in light of the fact of the current
2 position of the Chair, I think, and the involvement with
3 this.

4 It's going to become very -- very complicated
5 in terms of the relationship of the two cases, which I
6 think may be a bigger problem than simply looking at
7 whether or not this is a mandate or not.

8 I think the -- you know, looking at the
9 Administrative Law Judge process, our view of the process
10 is that it is becoming much longer than just a few months,
11 much more complicated and much more expensive. Fresno
12 County is an example now who is involved in a case. I
13 don't know how long that case has been going on. My recol-
14 lection is it's at least six months to date, and there
15 has not yet even been a hearing by the Administrative Law
16 Judge.

17 This particular case I don't think is as compli-
18 cated in many respects as that one may be, but I think
19 when you get a case that is of this nature, which is as
20 large and as important to all the jurisdictions involved,
21 I think that this is the kind of case that this Commission
22 and I think that the Legislature intended this Commission
23 to hear.

24 When the discussions on the creation of the
25 Commission on State Mandates were going through the

1 Legislature, the question was if this is the exclusive
2 body that makes those determinations, and initially there
3 was some discussion should they have independent commis-
4 sioners, such as like in the Public Utilities Commission,
5 which was recommended by the Legislative Analyst, to make
6 sure that those people had the time and effort to hear
7 it.

8 I think the feeling was that in those cases that,
9 you know, there were -- that we're faced between -- with
10 this kind of magnitude between state and local government,
11 that the members would be and have up in this period of
12 time -- have provided the time to hear these cases.

13 Now, we have had other cases in the past that
14 have taken in many cases as many as three or four hearings
15 to go through because the members at some point in time
16 in the hearing would send it back and say, we need more
17 information on this point, and for some reason we're not
18 in a position to make a decision until there was more evi-
19 dence, or to -- one of the parties had a chance to go back
20 and to investigate and to respond to the other party, so
21 there -- I think you're going to find that you are going
22 to have to spend a considerable amount of time with it
23 if it went to an Administrative Law Judge, and I think
24 that by doing that you're really simply, you know, delaying
25 the process and would be incurring a lot of additional

1 expense at both the state and local level.

2 I don't think that this -- while it is a compli-
3 cated claim, it is -- it is not a super, highly-technical
4 one. As an example, we had one on infectious waste, which
5 dealt a lot of very complicated regulations and other things
6 to look at, and was very difficult to deal with and grasp,
7 and I think that went through the process, and that worked
8 very well.

9 I think this is a much more straightforward kind
10 of a determination of some issues which are going to be
11 difficult issues for the Commission to deal with, but are
12 much more mandate-policy kinds of issues than they are
13 simply, you know, weaving your way through the -- some
14 technical aspects of the law.

15 So, as I say, it is going to have to come back
16 to this Commission, and I think that because of the magni-
17 tude and significance of this program -- let's say this
18 is -- this is not a small mandate. It is something that
19 is a tremendous amount of interest statewide on both sides
20 between the state and local government, that you're going
21 to want to spend the time to carefully analyze it, and
22 we would urge you to have this Commission or a panel of
23 this Commission hear this claim.

24 MR. CREIGHTON: Mr. Chairman, I would like to
25 make one thing clear. I certainly don't want to come up

1 from Long Beach and spend any more time in Sacramento than
2 is absolutely necessary, but by the same token, if it were
3 necessary I perhaps couldn't do it in the month of February,
4 but I probably could in March.

5 If it were necessary for a hearing date to be
6 set perhaps in association with this regular meeting, say
7 on a Wednesday or the following day, Friday, or whatever,
8 I would be willing to do that and, you know, be here for
9 two or three days if it were absolutely necessary, to get
10 the thing through.

11 Now, if that's not feasible with the other members
12 of the Committee, I certainly will understand, but I am
13 rather inclined to agree with Mr. Burdick. I think that
14 it's going to stop with us eventually, and if we are going
15 to have to spend a great deal of time to go over this,
16 even when it comes back from an Administrative Law Judge,
17 I don't know. I just suspect that we might as well get
18 it over with.

19 But on the other hand, if that is not the will
20 of the rest of the Commission Members., I certainly will
21 understand.

22 CHAIRMAN GOULD: Mr. Buenrostro.

23 MR. BUENROSTRO: Staff, have you -- has the
24 Commission employed a Hearing Panel in the past?

25 MR. EICH: No. No, this would be the first

1 Hearing Panel, if that's --

2 MR. BUENROSTRO: Does the Commission have any
3 guidelines or regulations on --

4 MR. EICH: There are some regulations that deal
5 with assigning a Hearing Panel. The Panel can consist
6 of one or two members, and they are appointed generally
7 by the Chairperson, as required by regulations.

a MR. CREIGHTON: I personally would not. favor
9 the idea of one member of the -- of the Commission acting
10 as a Panel. I think that in effect is just assigning one
11 member of the Commission to act perhaps in lieu of -- of
12 a Hearing Officer, and that person is not necessarily an
13 attorney. I think it would be placing that person at a
14 disadvantage.

15 I think that if two people could do it that might
16 be all right, or if the whole Commission wanted to do it,
17 if it could devote a special day to it, but I would not
18 want to see one member assigned as a Panel.

19 MR. SHUMAN: Well, as far as the Panel is con-
20 cerned, I think you're in the same situation then as with
21 a Hearing Officer. It would mean coming back to the full
22 Commission, and we would end up rehashing the whole thing
23 again anyway, so that doesn't get you any further along.

24 As far as the entire Commission hearing the mat-
25 ter, I wouldn't have any problem with that if it could

1 be handled at a regular meeting, with some understanding
2 that it all has to be resolved in one day, or -- or pos-
3 sibly --

4 MR. CREIGHTON: A day and a half?

5 MR. SHUMAN: -- a day and a half, or something,
6 but if it's going to go on for two, or three, four days, I
7 -- I just don't have that kind of time.

8 MR. CREIGHTON: Oh, no. No. I wouldn't want
9 that either, but let me ask you this, if this could be
10 done, and I would have to ask Mr. Eich.

11 Is it possible that you could put as many items,
12 we'll say, on the February calendar as possible to get
13 them over with, and then perhaps in the March calendar
14 perhaps devote that meeting to practically this specific
15 item, or is that the -- is that practical?

16 MR. EICH: It's not really practical, because
17 we need to set this item for hearing and ask for State
18 Agency recommendations on the merits and give them a dead-
19 line of eight weeks before whatever hearing we're going
20 to set it on to get the recommendations in.

21 Based on that, the earliest we could hear it
22 would be the April hearing. That would give the state
23 agencies a month to give us written recommendations.

24 MS. CHAPMAN: We have already received written
25 recommendations I think from the State Departments of

1 Education, Finance and Mental Health.

2 MR. EICH: That's correct.

3 MS. CHAPMAN: They have responded, substantively.

4 MR. EICH: The -- I understand the Health and
5 Welfare Agency wants to -- is interested in the claim and
6 wants to issue a recommendation, also.

7 MR. BUENROSTRO: What does your April calendar
8 look like?

9 MR. EICH: Well, I'm trying to remember right
10 now. I know we have no items set for May at this point.
11 April I think we've got probably a half dozen, but we could
12 probably juggle those around if we need to.

13 CHAIRMAN GOULD: I guess I share some of the
14 same reservations regarding the idea of a panel appointed
15 by us, and I think that to delay things in relation to
16 the Huff versus the Commission is not feasible either
17 because of timing.

18 I think we are really down to a question of
19 whether or not this group can set the time aside from
20 its other duties to hear what is a very important case,
21 and I don't think any of us are diminishing the importance
22 of the case even by entertaining the idea of having an
23 Administrative Law Judge do the initial review. ,

24 It seems to me that, given some uncertainty
25 regarding how long it might take to deal with the issue,

1 and some reservation I know on my part and I think
2 Mr. Shuman's part, on whether or not we could devote an
3 extensive amount of time, I would be inclined to have an
4 Administrative Law Judge do the initial review, sort
5 through some of the facts, and provide us a recommendation
6 to help frame the issue for the group.

7 And I frankly think even at that time we'll be
8 spending an extensive amount of time with it, but I think
9 it will help us in focusing our efforts best. That's my
10 personal view of it.

11 Yes.

12 MS. CHAPMAN: Gentlemen,. I don't think the big
13 issue will be on the facts. I think the issue, as
14 Mr. Burdick pointed out, will be more on the policy and
15 the legal questions, as -- I think the statutes are clear
16 about what they mandate. I think fundamentally it's pretty
17 simple as to what the county is mandated to do, and I think
18 that we can make all our efforts to present it one day.

19 MR. BURDICK: I'd like to just make one final
20 comment, and that is that, relative to the Administrative
21 Law Judge, I think actually, in terms of framing issues
22 for you' and reviewing the documents, your staff is probably
23 better at doing that than the Administrative Law Judges
24 are.

25 Our experience has been with most of them is

1 that they are -- they don't understand the process. They
2 are new to it. They haven't been involved in the law,
3 and it takes them a long time to really get a handle on
4 it.

5 Your staff, I think, in this three years has
6 developed a tremendous amount of expertise in that period
7 of time, and it can now do a very good job of identifying
8 those issues that need to come before you, so, not -- not
9 only on this claim but on others, at this point I think
10 is that --- our feeling is, and the members of some of the
11 county people I've talked to, is that the Administrative
12 Law Judges -- that this is a whole brand new thing to them,
13 they don't understand the process, they have to do a lot
14 of research just to understand the law, the Constitution,
15 the process, and so forth, and that now that your staff
16 after three years, and most of the staff members have been
17 with you for that period of time, or most of that period
18 of time, really do a very good job I think of being able
19 to sort through it and be able to identify the essential
20 issues that the Commission needs to deal with.

21 And so I -- I do not think that an Administrative
22 Law Judge will give you as good a handle on a problem,
23 or at least the issues and -- and frame them as well as
24 your own staff will.

25 That's my personal feeling, just for those of

1 you --

2 CHAIRMAN GOULD: Mr. Buenrostro.

3 MR. BUENROSTRO: I would agree with your comments
4 on the staff's expertise, and reading their analysis I'm
5 concerned that you disagree with their framing of the issues
6 as both complex and difficult, and based on that believe
7 that if it's their recommendation that these are complex
8 and difficult issues, I have to listen to them very care-
9 fully.

10 I have some personal commitments, as does
11 Mr. Shuman and Mr. Gould, that -- or professional commit-
12 ments, rather, that make it very difficult for me to spend
13 an extended period of time either as a panel member or
14 as a Commission member hearing this specific claim. I'm
15 not opposed to a panel, but I think that the Commission
16 is interested in doing the best job it can, and I would
17 agree with what both of you have said about the time commit-
18 ment, and the need to do a good job on it.

19 And I'm just very concerned that you -- I know
20 you agree that the staff is very competent, and when they
21 say the issues involved are both complex and difficult,
22 that argues against --

23 MR. BURDICK: I guess it's a matter of, you know,
24 what is complicated or what isn't. I mean in the range
25 of these -- almost all of these issues tend to be

1 complicated. I mean very few are not complex that we
2 deal with.

3 The difficult part I think is the part we would
4 underscore, and difficult in terms of the members, in
5 terms of making some decisions on -- in some areas, and
6 some of them may even be some new interpretations of how
7 you want to view mandates.

8 But, yes, there is -- there are very few in this
9 business that aren't complicated. I'm just -- I guess
10 it's just the-difference from a relative standpoint is
11 how complicated they are. I don't think they are of that
12 particularly really detailed, technically kinds of things
13 that you don't deal with on a day-to-day basis that--
14 you know, I'm not saying they aren't complicated, but I
15 think in -- in relation to the other issues you deal with
16 in this process, I don't think they are particularly com-
17 plicated.

18 MR. SHUMAN: Well, I'd like to hear Mr. Eich's
19 comments on that, as to the complexity and difficulty,
20 and whether he has some time estimate.

21 MR. EICH: Well, in my review of the claim, the
22 -- the claim is not going to be extremely complex factually,
23 as somearethat we send to an Administrative Law Judge.
24 I think there are going to be some important policy deci-
25 sions that need to be made.

1 On that basis, the Commission is going to have
2 to -- if they send it to an Administrative Law Judge,
3 carefully review the decision and precedent set down in
4 that decision, or carefully review it on their own if they
5 decide to hear it on their own at a future hearing.

6 As far as setting it at a future hearing, I think
7 we could set aside one day for this claim. At the end
8 of that day there is no doubt going to be some additional
9 questions raised, additional research needed, if a decision
10 is not made that day, and we could then set other hearing
11 time as required in the future, thereby not, you know,
12 impinging impinging on more than a day -- one day at a
13 time, not requiring several.

14 MR. SHUMAN: Well if the issues are not parti-
15 cularly factually complex, are they legally complex? In
16 other words, are these issues that are going to require
17 advice of counsel, and careful legal analysis or research?

18 MR. EICH: This would be speculation on my part,
19 really, as to the complexity legally of them, not being
20 an attorney.

21 In looking over the special education suit, some
22 of the same issues seem to be here as far as the federal
23 mandate issue.

24 The Board of Control had a great deal of diffi-
25 culty wading through the federal mandate issue on the

1 special education case. It's partly on that basis that
2 I think a lot of the same issues are going to have to be
3 rehashed with the Commission, and they are going -- it's
4 not an easy issue to deal with, really. But as far as
5 the complexity --

6 MR. LEHMAN: Something that would complicate
7 this, also, is during the staff's development of the analy-
8 sis we willbewithout counsel on this claim.

9 MR. CREIGHTON: Then should we possibly consider
10 the retention of the services of special counsel who would
11 guide us on this?

12 CHAIRMAN GOULD: Well, you know, that -- that
13 makes some sense to me. I mean if we entertain the idea
14 of dealing with the claim ourselves initially, that we
15 might want to include with that idea the idea of retaining
16 counsel to assist staff in reviewing the claim and assist-
17 ing us in dealing with -the issue when it's brought before
18 us.

19 MR. CREIGHTON: If this comes to --

20 CHAIRMAN GOULD: I would like to get Mr. Eich's
21 reaction to that, and that might be necessary.

22 MR. EICH: Well, as the Commission knows --

23 CHAIRMAN GOULD: If the complexity of the issues
24 are legally based.

25 MR. EICH: Yes. As the Commission knows, we,

1 have counsel for the -- for the Commission in the Huff
2 versus Commission case. They have, as a result, become
3 somewhat familiar with the issues involved here. It may
4 be possible to amend our contract with them to obtain their
5 advice on this case.

6 MR. CREIGHTON: If this is going to come back
7 to us eventually to decide, I think we should have someone
8 here when we -- whether or not it goes to an Administrative
9 Law Judge, I think eventually it's going to come back
10 to us, and I think certainly at that time we are going
11 to have to have someone here as our legal counsel, and
12 I think it's very important that that be done.

13 My own personal preference, of course, is that
14 we hear it as a Commission, and we have legal counsel to
15 represent us here when we hear it as a Commission. I under-
16 stand the thrust of the other members because of your busy
17 schedules, you perhaps prefer to send it to an Administra-
18 tive Law Judge, and if you do, that's fine with me. I
19 will vote "No" on that motion, but by the same token I
20 do feel that we should have legal representation here if
21 and when we eventually -- well, not if, but when we even-
22 tually review this.

23 CHAIRMAN GOULD: Any other comments from the
24 Members?

25 MR. BUENROSTRO: Yes. You have already said

1 that you think the Huff versus Commission case is an impor-
2 tant part of this claim.

3 MR. EICH: Some of the same issues are involved,
4 yeah,' as far as on the merits of the claim.

5 MR. BUENROSTRO: I would wan to hear what the
6 Commission's counsel would advise about them being our
7 counsel on this claim. I think that possibly the plaintiff
8 in the case would want to talk to their counsel about the
9 advisability of the Commission retaining counsel in this
10 claim, because we may find that both counsels have a con-
11 flict.

12 I'm not sure, but I would want to talk to counsel
13 about that before we employed the same counsel for this
14 case.

15 MR. EICH: Okay. Well, we can do that. We can
16 certainly discuss it with them and determine if there is
17 a potential conflict.

18 CHAIRMAN GOULD: I think that's a legitimate
19 question to be explored.

20 Mr. Shuman?

21 MR. SHUMAN: Well, I think that's a very good
22 point. It may be, because the present counsel in the Huff
23 case is going to be an advocate for one, can he really
24 be objective and divorce himself into an advocacy role
25 in a similarly dif'ferent case?

1 MR. BUENROSTRO: Well, and his counsel may be
2 very concerned about him accepting that advice.

3 MR. SHUMAN: Right.. I still tend to think that
4 if you're going to refer it to an Administrative Law Judge,
5 the Administrative Law Judge is an attorney who would be
6 capable of analyzing the legal issues, framing the issues,
7 and bringing some focus to it, and making it easier for
8 the Commission to deal with when it comes back to the
9 Commission. I still favor that approach, and I propose
10 to make a motion to that effect.

11 CHAIRMAN GOULD: Okay. Shall we entertain that
12 then as a motion?

13 MR. SHUMAN: I will move that this -- the hear-
14 ing on this test claim be referred to an Administrative Law
15 Judge to take testimony and legal arguments and to prepare
16 recommendations to the Commission.

17 CHAIRMAN GOULD: All those in favor of the
18 motion?

19 COMMISSION MEMBERS: Aye.

20 CHAIRMAN GOULD: All those opposed?

21 MR. CREIGHTON: No.

22 CHAIRMAN GOULD: The motion is adopted. Thank
23 you.

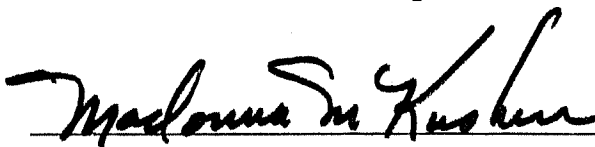
24 (Whereupon, the hearing on Agenda Item 9 was
25 concluded.)

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REPORTER'S CERTIFICATE

THIS IS TO CERTIFY that I, Madonna M. Kushen, Reporter, have duly reported the foregoing proceedings which were held and taken in Sacramento, California, on Thursday, the 28th day of January 1988, and that the foregoing pages constitute a true, complete and accurate transcription of the aforementioned proceedings.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

A handwritten signature in cursive script, reading "Madonna M. Kushen", written over a horizontal line.

Madonna M. Kushen, Reporter

MINUTES

COMMISSION ON STATE MANDATES

January 28, 1988

10:00 a.m.

State Capitol, Room 2040
Sacramento, California

Present were: Chairperson Russell Gould, Chief Deputy Director, Department of Finance; D. Robert Shuman, Deputy Controller, State Controller's Office; Robert C. Creighton, Public Member. Absent was Huston T. Carlyle, Jr., Director, Office of Planning and Research.

There being a quorum present, Chairperson Gould called the meeting to order at 10:10 a.m.

Item 1 (Minutes) was continued to later in the hearing when an appropriate quorum would be present to consider the item.

Member Fred R. Buenrostro, Representative for the State Treasurer, arrived at the hearing.

Item 2 Amendments to Parameters and Guidelines
Chapter 1111, Statutes of 1985
CHAPTERS ADDED:
Chapter 51, Statutes of 1984
Chapter 177, Statutes of 1985
Chapter 249, Statutes of 1986
Missing Person Reports

There were no appearances and no discussion on this item. Member Creighton moved adoption of the staff recommendation. Member Shuman seconded the motion. The vote was unanimous and the motion carried.

Item 1 Minutes

There now being a quorum on this item present, the Commission on State Mandates considered the minutes of the October 22, 1987, hearing. Chairperson Gould asked if there were any changes or objections to the minutes. There being no objection, the minutes were approved.

Minutes

Hearing of January 28, 1988

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Item 3 Proposed Statewide Cost Estimate
Chapter 566, Statutes of 1974
Patient Aftercare Plans

Staff explained to the commission that this cost estimate was developed by the claimant, County of Fresno, in cooperation with the County Supervisors Association of California. However, because Chapter 566, Statutes of 1974 is a pre-1975 statute, state reimbursement is not constitutionally required. Consequently, the claimant had a very small response to its statewide cost estimate survey. Because of the limited response, and because the statute predates 1975, staff did not conduct another survey.

Paul Robinson, representing the County of Fresno, stated his concern that if the commission were to adopt the cost estimate presented by staff, and an appropriation is received, there will probably be a deficiency in the fund as all counties begin to submit reimbursement claims.

Allan Burdick, representing the County Supervisors Association of California, urged the commission not to adopt the proposed statewide cost estimate submitted by staff, because the estimate only represented the costs of four counties. Instead, Mr. Burdick suggested that the commission extrapolate from the data submitted by the four counties into an actual statewide cost estimate. Mr. Burdick explained that this was not unfeasible as the four counties that submitted cost information are representative of small, medium, and large counties.

The Executive Director stated that after review and the testimony presented, he recommends the commission continue this item so staff can conduct a survey.

The commission expressed reluctance toward extrapolating a statewide cost estimate from information submitted by three counties. Member Shuman moved to return the cost estimate to the commission staff, who would conduct a statewide cost estimate survey of all counties. The vote on the motion was unanimous. The motion carried.

Item 4 Statewide Cost Estimate
Chapter 1203, Statutes of 1985
Motorists Assist

Member Creighton moved to adopt the proposed statewide cost estimate. The vote on the motion was unanimous, and the motion carried.

Item 5 Proposed Statement of Decision
Chapter 641, Statutes of 1986
Government Code Sections 54954.2 and 54954.3
Open Meetings Act

There were no appearances and no discussion on this item. Member Buenrostro moved to continue this item for lack of an appropriate quorum. The vote on the motion was unanimous, the motion carried, and this item was continued to the February 25, 1988, hearing.

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Item 6 Proposed Statement of Decision
Chapter 850, Statutes of 1979
In Forma Pauperis

Member Creighton moved adoption of staff's proposed statement of decision. The vote on the motion was: Member Buenrostro, aye; Member Creighton, aye; Chairperson Gould, aye; Member Shuman abstained. The motion carried.

Item 7 Reimbursement Claim
Rincon Del Diablo Fire Department
Title 8, CAC, Section 3501-3509
Firefighter Safety Clothing and Equipment

Chairperson Gould moved the adoption of the amount recommended for payment by the State Controller's Office. The vote on the motion was unanimous. The motion carried.

Item 8 1985-86 and 1986-87 Fiscal Years
Deficiency Request from State Controller's Office

There were no appearances and no discussion on this item. Member Creighton moved adoption of the staff recommendation. The vote was unanimous and the motion carried.

Item 9 Discussion Item
Chapter 1747, Statutes of 1984
Chapter 1274, Statutes of 1985
Title 2, CAC, Division 9
Handicapped and Disabled Students

Staff informed the commission that this claim contained complex and difficult issues, and that it may be impacted by the Huff v. Commission on State Mandates litigation. Staff also informed the commission that these statutes are funded, and the Auditor General has been unable to determine the sufficiency of funding. Because of the incompatibility of this test claim with a regular commission hearing, staff presented the commission with a list of options on how the commission may wish to proceed.

Due to the possible relatedness of this claim to the Huff v. Commission on State Mandates litigation, the commission's counsel, who is a Deputy Attorney General, excused himself from the hearing because of a possible conflict of interest. The Attorney General's Office is counsel to Mr. Huff in the litigation.

Susan Chapman, representing the County of Santa Clara, summarized the issues involved in this test claim. Ms. Chapman stated that she did not believe that this test claim would be impacted by the Huff v. Commission on State Mandates litigation because the issues were different. Ms. Chapman then stated that she would prefer the commission either hear the claim at a regularly scheduled hearing, or assign the claim to a hearing panel. However, she did not care for sending the claim to an administrative law judge (ALJ) for hearing, because it is a lengthy and expensive process.

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Member Shuman stated that he did not like the time obligation that would be required of the hearing panel members, nor did he like the idea of postponing the test claim hearing until the Huff-v. Commission on State Mandates litigation was adjudicated. Member Shuman explained that he would rather send the claim to an ALJ for hearing. The commission then discussed the merits of using an ALJ on this claim. Member Creighton noted that even if the commission sends the claim to an ALJ, it will be without counsel when it is time to decide in the proposed decision issue by the ALJ.

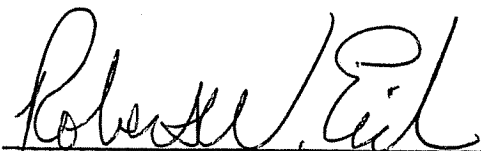
Allan Burdick, representing the County Supervisors Association of California, stated that he preferred that the commission hear this claim instead of an ALJ. Mr. Burdick stated that the ALJ process is lengthy and expensive, for both the state and the claimant. Mr. Burdick stated that he believed that this was the type of claim that the Legislature had intended the commission to hear and he did not believe it was appropriate to send such a claim to an ALJ.

Member Creighton stated that he was willing to sit on a hearing panel in order to decide on this claim. Member Buenrostro inquired on whether there were any regulations on the appointing of a hearing panel. Staff informed the commission that the regulations on appointing a hearing panel stated that the commission chair could appoint a hearing panel of one or more commission members. Member Creighton stated that he did not approve of a hearing panel comprised of one commission member. Other commission members agreed and stated that a hearing panel of one member would be burdensome on that member and would not be significantly different than sending the claim to an ALJ. Chairperson Gould expressed his preference on assigning the claim to an ALJ for hearing.

Mr. Burdick stated that the commission's staff has the expertise to deal with a claim such as this one, and the counties would much prefer that the claim be handled by the commission staff because of their expertise and knowledge on these types of claims. Member Buenrostro agreed that the commission staff has a great deal of expertise in analyzing test claims; however, the commission staff has also stated that this claim is difficult and complex, and as commission member, he is inclined to heed such a statement by staff. The commission then continued discussion on whether the claim should be assigned to a hearing panel or an ALJ.

Member Shuman moved to send the claim to an ALJ for a hearing on the merits of the claim, and to have the ALJ develop a proposed decision for the commission to consider for adoption. The vote on the motion was: Member Buenrostro, aye; Member Creighton, no; Member Shuman, aye; Chairperson Gould, aye. The motion carried.

With no further items on the agenda, Chairperson Gould adjourned the hearing at 11:05 a.m.



ROBERT W. EICH
Executive Director

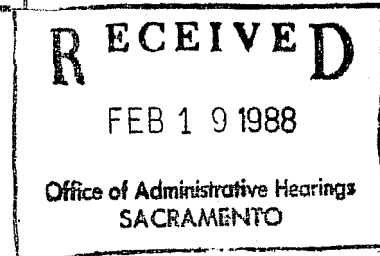
COMMISSION ON STATE MANDATES

1130 K STREET, SUITE 1150
 SACRAMENTO, CA 95814
) 323-3562

February 18, 1988

Karl S. Engeman
 Administrative Law Judge in Charge
 Office of Administrative Hearings
 501 J Street, Suite 230
 Sacramento, CA 95814

STATE OF CALIFORNIA
 ADMINISTRATIVE HEARINGS
 Compl.)
 Resp.)
 Date: A
 ID: C
 Filed: ✓



Re: Claim of County of Santa Clara
 Chapter 1747, Statutes of 1984
 Chapter 1274, Statutes of 1985
 Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Engeman:

The enclosed test claim has been scheduled for hearing on May 10 and 11, 1988, at 9:00 a.m. before an administrative law judge of the Office of Administrative Hearings, 501 J Street, Room 220, Sacramento, California. This test claim from the County of Santa Clara seeks a finding that state-mandated costs were created by implementation of Chapter 1747, Statutes of 1984 and other subsequently enacted legislation, and regulation, impacting the provision of mental health assessments, case management, and treatment for children who are residents of the county. After a review of the submittals from all of the interested parties, the commission determined that it would be in the best interests of all parties if this claim were heard by an administrative law judge.

The Commission on State Mandates requests that the following issues be addressed in the decision as well as any others deemed appropriate by the administrative law judge:

1. Does Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985, and Division 9, of Title 22, of the California Administrative Code mandate counties to implement a new program or higher level of service in an existing program within the meaning of Government Code Section 17514 and Section 6 of Article XIII b of the California Constitution?
2. Do the statutes in question implement a federal mandate, specifically, Section 504 of the Rehabilitation Act of 1973, and Public Law 94-142?
3. Has the claimant incurred unreimbursed costs, from state or federal funds, as a result of any activities mandated by these statutes and regulations?
4. If the statutes in question are found to require a new program or higher level service, do the affected local entities have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service as discussed in Government Code Section 17556(d)?

5. Do any of the other provisions for denying a test claim, as set forth in Government Code Section 17556, apply to this claim?

Copies of all of the relevant material contained in this office's file on this test claim are enclosed herein and include:

- a. the test claim filed by the County of Santa Clara
- b. pertinent statutes submitted as attachments to test claim
- c. recommendation of the Department of Finance, dated November 30, 1987
- d. recommendation of the Department of Mental Health, dated November 30, 1987
- e. recommendation of the Department of Education, dated November 24, 1987
- f. rebuttal by the County of Santa Clara, dated December 16, 1987
- g. Report by the Auditor General entitled "A Review of the Costs of Providing Noneducational Services to Special Education Students"
- h. a supporting declaration from the County of Riverside
- i. a letter of support from State Senator Rebecca Q. Morgan

If further information is needed by your staff regarding this matter, please contact me at 323-3562.

Sincerely,



STEPHEN R. LEHMAN
Assistant Executive Director

SRL:do:0165s

Enclosures

cc: Jim Apps, Department of Finance
Glen Beatie, State Controller's Office
Phil Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office
✓ Susan A Chapman, County of Santa Clara
Lynn Whetstone, Department of Mental Health
Robert W. Agee, Department of Education
Barbara Hooker, Health and Welfare Agency
✓ Allan Burdick, County Supervisors Association of California
I/Andrea Hix, David M. Griffith & Associates, Ltd.
Paula Jesson, City and County of San Francisco
Samuel Brandt, County of Orange
William C. Katzenstein, County of Riverside

RECEIVED

AUG 17 1987

COMMISSION ON
STATE MANDATES

TEST CLAIM FORM

(Submit FOUR COPIES of ALL ATTACHMENTS)

FOR OFFICE USE ONLY

DATE FILED

CLAIM NO.

8-17-87

CSM-4282

ENTITY SUBMITTING CLAIM

COUNTY OF SANTA CLARA

CONTACT PERSON FOR QUESTIONS ON CLAIM

TELEPHONE NO.

SUSAN A. CHAPMAN

(408) 299-2111

SEND FORM AND ATTACHMENTS TO:

COMMISSION ON STATE MANDATES
1025 P STREET, ROOM 177
SACRAMENTO, CA 95814
(916) 323.3562

ADDRESS

OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110

REPRESENTATIVE ORGANIZATION TO BE NOTIFIED

C S A C

I. STATUTE (OR) EXECUTIVE ORDER ALLEGED TO CONTAIN MANDATE

Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985
Title 2 Cal-i'f'ornia Administrative Code Division 9

II. THE FOLLOWING MUST BE PROVIDED WITH THE CLAIM

- A. A copy of the chaptered bill or executive order which contains the alleged mandate, specifically identifying the statutes and sections alleged to contain a mandate.
- B. Identify state constitutional provisions, federal statutes or executive orders and/or court decisions that impact the alleged mandate.
- C. Attach narrative which describes in detail the alleged mandate and activities. Include a description of what was required prior to the enactment of the alleged mandate, what the alleged mandate requires and how any increased level of service or new program was incurred.

If the narrative describing an alleged mandate involves more than discussion of statutes of regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations must be supported by testimonial or documentary evidence which shall be submitted with the claim. All documentary evidence must be authenticated by declarations under penalty of perjury signed by persons who are authorized or competent to do so and the basis for authorization or competence must be stated in the declarations.

- D. Attach a statement of actual and/or estimated costs which result from the alleged mandate, identified by function and fiscal year.

IMPORTANT NOTE: Test claims will be returned to the claimant if any of the preceding elements or attached documents are illegible, missing or incomplete.

III. CERTIFICATION

I certify under penalty of perjury that the foregoing and the attachments are true and correct of my own knowledge.

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

TELEPHONE NO.

DIANNE MCKENNA, CHAIRPERSON, BOARD OF SUPERVISORS

(408) 299-2328

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

Dianne McKenna

AUG 4 1987

COUNTY OF SANTA CLARA

Test Claim.-
% Chapter 1747, Statutes of 1984.
Chapter 1274, Statutes of 1985,
and

Title 2 California Administrative Code Division 9

Mental Health Services to Handicapped and Disabled Students

This is a test claim of the County of Santa Clara. for reimbursement of the costs of the services mandated by Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; and Title 2 California Administrative Code Division 9, relating to the provision of mental health services for handicapped children, for Fiscal Year 1986-87 in the amount of \$3,081,000, submitted in accordance with the provisions of Revenue and Taxation Code Section 2231 and Government, Code Division 4 Part 7.

I. Background

Federal law requires states which receive grants-in-aid under the Education for All Handicapped Children Act to have in effect a plan to provide all handicapped children a free, appropriate, public education, including the provision of related services necessary for children to take advantage of their education.

Section 2 of Chapter 1218, Statutes of 1980 added Chapter 24. to the Government Code (renumbered, by Chapter 714, Statutes of 1981 as Chapter 25). This established the Legislature's intent to assure receipt of federal funding, including the funds available for services to handicapped children. The responsibility for supervising education and related services for handicapped children specifically required pursuant to the federal requirements was delegated to the Superintendent of Public Instruction. Title 5 California Administrative Code Division 3, commencing with Section 3000, established the responsibilities, of the local educational agencies with respect to the assessment of, and provision of special education and related services to handicapped children.

Prior to the passage of Chapter 1747, Statutes of 1984, local educational agencies were responsible for the assessment and provision of mental health services for handicapped children who needed mental health services in order to take advantage of their individualized education programs (IEPs). The County did not provide individualized education program assessments, or case management for children placed out-of-home pursuant to individualized education programs. With the passage of Chapters 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, and the implementation of Title 2 California Administrative Code

Division 9, the Mental Health Bureau of the County of Santa Clara must provide mental, health assessment, case management, and treatment for these children who are residents of the County;

II. Nature of the Mandate

Chapter 1747, Statutes of 1984 added Chapter 26 to Division 7 of Title 1 of the Government Code, and amended Section 11401 of the Welfare and Institutions Code. The legislation provided that psychotherapy and other mental health assessments for children with suspected handicaps shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health. Government Code Sections 7572(c) and 7576. The legislation provided that a representative of the county mental health department shall be included on a child's individualized education program team if the child is classified as seriously emotionally disturbed and the individualized education program recommendation includes out-of-home placement. Government Code Section 7572.5. The State Department of Mental Health or designated community mental health service shall be responsible for the provision of psychotherapy or other mental health services, if the services are necessary in a disabled child's individualized education program. Government Code Section 7576. Parents shall not be liable for the cost of therapy. Government Code Section 7582.

Chapter 1274, Statutes of 1985 amended Chapter 26 of Division 7 of Title 1 of the Government Code, and amended Sections 5651, 10950, and 11401 and added Chapter 6 to Part 6 of Division 9 of the Welfare and Institutions Code. This legislation designated the county mental health agency as case manager for seriously emotionally disturbed children for whom out-of-home placement has been recommended. Government Code Section 7572.5(c)(1). The county mental health agency may delegate this responsibility to the county welfare department, but the county mental health agency remains financially responsible. Government Code Section 7572.5(c). The person who conducts an assessment must attend the individualized education program team meeting if requested. Government Code Section 7572(d)(1). Parents shall not be liable for the costs of mental health assessments or 24-hour out-of-home care for seriously emotionally disturbed children. Government Code Section 7582; Welfare & Institutions Code Section 18350.

New Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610) of California Administrative Code Title 2 was filed December 31, 1985 effective January 1, 1986, and refiled June 30, 1986. These regulations make clear that the local mental health agency shall be responsible for the mental health assessments, and

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
Page 3

shall be financially responsible for provision of mental health services included in an individualized education program, regardless of whether the services are delivered directly by the agency or by contract. Title 2 California Administrative Code Section 60020. The local mental health program shall be responsible for reviewing the educational information, observing the student in the school environment if necessary, determining if mental health assessments are needed and, if assessment is needed, preparing a written assessment. Title 2 California Administrative Code Section 60040.

Subsequent legislation (Chapter 186, Section 2.00, Statutes of 1986; Chapter 1333, Section 3, Statutes of 1986) for Fiscal Year 1986,87 allocated \$2,000,000 to the State Department of Mental Health for assessments, treatment, and case management services, and made available for transfer from the, State Department of Education to the State Department of Mental Health an additional \$2,700,000 for assessments and mental health treatment services. Of these amounts, \$222,955 has been allocated to the County of Santa Clara.

As a result of this legislation, "the County reviews educational information, determines whether, assessments are necessary, assesses the mental health needs of referred individualized education program children with suspected handicaps, prepares written assessments, attends individualized education program team meetings as a team member if the child is seriously emotionally disturbed and residential placement is recommended by any team member, has, the person who performed the assessment present at team meetings if requested, conducts mental health treatment for children for whom such treatment is recommended in individualized education programs, contracts with and provides the financing for mental health treatment by private contractors, and acts as case manager for seriously emotionally disturbed students in out-of-home placements.

The County's cost of providing mental health assessments, case management, and treatment for Fiscal Year 1986-87 are set forth in the following schedule.

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Mental Health Services to Handicapped and Disabled Students
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Assessment and Case Management

Salaries	\$ 127,000	
Services & Supplies	16,000	
Overhead	<u>21,000</u>	
Subtotal		\$ 164,000

Treatment

Treatment prescribed in IEPs
for children assessed prior
to October 30, 1986: .

Day Treatment (\$93 x 37,237 units) 202 children	\$3,463,000	
Medication Monitoring (\$66 x 86 units) 8 children	5,000	
Individual Therapy (\$87 x 3069 units) 72 children	267,000	
Group Therapy (\$55 x 1364 units) 29 children	75,000	

Estimated cost for treatment
for children assessed after
October 30, 1986:

Estimated Additional (\$1,000 mo. x 6 mos.) 25 children	<u>150,000</u>	
Subtotal	\$3,960,000	
Medi-Cal & Insurance	<u>(820,000)</u>	

Net Treatment Cost	<u>\$3,140,000</u>
Total Program Cost	3,304,000
Less Appropriation	<u>(222,955)</u>
Estimated Net Cost	<u>\$3,081,000</u>

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
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The estimated total net treatment cost of \$3,140,000 for Fiscal Year 1986-87 includes the cost of individualized education program-mandated treatment for children previously known to the County mental health system, as well as the cost of treatment for children new to the County Mental Health system, allocated as follows:

Estimated cost of treatment for children known to the County mental health system prior to FY 1986-87 (215 children)	\$2,950,000	
Less: Medi-Cal & Insurance	<u>(611,000)</u>	
Estimated net treatment cost (old cases)		\$2,339,000
 Estimated cost of treatment for children new to the County mental health system in FY 1986-87 (121 children)	 \$1,010,000	
Less: Medi-Cal & Insurance	<u>(209,000)</u>	
Estimated net treatment cost (new cases)		<u>801,000</u>
Estimated total net treatment cost		<u>\$3,140,000</u>

Children known to the County mental health system prior to Fiscal Year 1986-87 had received some mental health services in prior years from either the County or County contract providers. These services did not necessarily satisfy the recommendations of the individualized education programs of those children, as the County was not required to provide the service specified in individualized education programs. Children who had individualized education programs which recommended mental health services were treated no differently from other children receiving mental health services. The County made clinical decisions regarding who to treat, and what treatment to provide. Children were not necessarily seen as often as required by their individualized education programs. The focus of therapy was on the global mental health needs of the children, not the needs as they relate to the ability to, benefit from a free, appropriate, public education.

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
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The effect of Chapter 17.47, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 California Administrative Code Division 9 is to give the highest priority to individualized education program treatment; If mental health resources are insufficient to meet the needs of the community immediately, treatment required by individualized education programs must continue to be provided; Patients with more acute illnesses, but without individualized education programs--including children--may be placed on waiting lists. The County previously had the flexibility of prioritizing treatment or reducing the level of mental health services below the level required by individualized education programs. The County has lost this flexibility, as the legislation mandates that the County provide mental health services pursuant to individualized education programs, regardless of the severity of the mental condition, and regardless of funding limitations:

The legislation impacts the County's treatment of children pursuant to individualized education programs in another way as well. Prior to Fiscal Year 1986-87, fees were charged in accordance with the responsible party's ability to pay, regardless of whether the services rendered were required by an individualized education program. The parents of individual patients were liable for the costs of mental health care under Welfare & Institutions Code Sections 5716 and 5718, as determined under the UMDAP program. If a child were covered by insurance, the parents were required to submit insurance claims;

With the passage of, Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985, the County may not charge parents for the services rendered. Further, as this legislation brings the mental health services within the ambit of federal Education for All Handicapped Children law, the County has lost substantially the ability to require parents to submit insurance claims for the rendered services. With regard to IEP children who received mental health services in prior years and who continue to receive individualized education program-mandated mental health services, this has resulted in an estimated revenue loss of \$66,000 in patient fees and third party insurance for Fiscal Year 1986-87.

In addition, in prior years school districts partially funded, County contract providers who provided individualized education program services. In Fiscal Year 1985-86, County contract providers received \$204,000 from school districts. The County providers now look to the County alone to provide all the funding for treatment pursuant to individualized education programs. The estimated loss in revenue, from this source is

County of Santa Clara Test Claim
Mental Health Services to Handicapped and Disabled Students
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\$212,000 (~\$204,000 plus a cost of living increase of 4%). Additionally, the County asserts that it had the option in prior years of billing school districts for mental health services provided pursuant to individualized education programs. As the County is now responsible for providing these services, this is no longer an option.

Prior to 1986-87, the County provided no financial contribution for mental health services rendered by providers other than the County, County contract providers, or state hospitals. Under Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9, the County may be required to pay for mental health services rendered by private therapists as well.

Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9 clearly impose on the County of Santa Clara a mandate as defined in Government Code Section 17514(a). As a result of this mandate, the County of Santa Clara will incur estimated unreimbursed costs for Fiscal Year 1986-87 in the amount of \$3,081,000 for the assessment, case management, and treatment of handicapped children pursuant to individualized education programs.

III. Federal Statutes

The Education of All Handicapped Children Act ("EHA") 20 U.S.C. 51401 et seq., provides that a state must, in order to receive federal grants-in-aid under the Act; have in effect, "a policy that assures all handicapped children the right to a free appropriate public education." 20 U.S.C. §1412(1). "Free appropriate, public education" requires that special education and related services, are provided at public expense, under public supervision and direction, and without charge. 20 U.S.C. §1401(a)(18); 20 U.S.C. §1412(2)(C). Related services include counseling and psychological services as may be required to assist a handicapped child to benefit from special education. 20 U.S.C. 51401(a)(17).

A state choosing to participate in the Education for All Handicapped Children program must submit a plan setting forth policies, procedures and program descriptions. 20 U.S.C. §1413. Federal grants-in-aid received by a state are allocated to local educational agencies and intermediate educational units. 20 U.S.C. §1411(d). Federal law does not provide for an allocation of the grants-in-aid to local mental health agencies. However, since California has chosen to delegate to counties the responsibility for providing Education for All Handicapped Children mental health assessment, case management and treatment, local mental health agencies must comply with federal law.

IV. Cost Recovery.

Chapter 1747, Section 5, Statutes of 1984 states:

Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

Chapter 127.5, Section 17, Statutes of 1985 states:

Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act, shall be made pursuant to Part 7. (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

The County's share of the funds appropriated by Chapter 1133, Statutes of 1986 for Fiscal Year 1986-87 is \$222,955. cost recovery from the federal portion of Medi-Cal reimbursement; and from third party insurance reimbursement. for all mental health services rendered pursuant to individualized education programs is estimated. to be \$820,000 for Fiscal Year 1986-87. The estimated net cost of complying with the mandate, during Fiscal Year 1986-87, less the \$222,955 previously allocated to the County of Santa Clara from the total appropriation, is \$3,081,000.

The County of Santa Clara has only a limited remedy available to, it, as described in Government Code Section 17556(a)(4), to "levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. "

Generally, patients or other responsible parties are charged fees for mental health services, determined by their ability to pay. Welfare & Institutions Code Section 5716. Insurance companies are billed for covered services. If the services are for individualized education program treatment,

however, the services must be provided at no charge to the parents regardless of their ability to pay, and the ability of the County to obtain reimbursement from parents' insurance companies for therapy rendered pursuant to individualized education program is limited. Parents may voluntarily agree to submit insurance claim forms, but may not be compelled to do so if it would result in any cost to them, such as through a reduction of lifetime benefits or an increase in premiums.- "Notice of Interpretation", 45 FR 86390-86391, December 30, 1980; Bureau of Education for the Handicapped Policy Letter,, 2 EHLR 211:361, April 29, 1985.

Cost recovery from the federal portion of Medical reimbursement and from third party insurance reimbursement from voluntarily submitted claims is estimated to be \$820,000.

There is no cost recovery from the state Medi-Cal program. In Fiscal Year 1986-87, the County of Santa Clara has entered into a negotiated net amount Short-Doyle contract with the State of California, pursuant to Welfare & Institutions Code Section 5705.2(c). Under this provision: the County receives a fixed amount of funding from the State in lieu of Short-Doyle Medi-Cal and other Short-Doyle funds. Welfare and Institutions Code Section 5705.2(f). Through this contract, the County agrees to provide services consistent with the following principles:

- (1) A continuum of mental health services which are required by statute and which are accessible and acceptable to the county population;
- (2) Mental health services which are culturally and age-appropriate to the type, amount, and intensity needed to maximize recovery;
- (3) Mental health services in the least restrictive appropriate environment available with due regard for individual constitutional rights and public safety;
- (4) Prompt evaluation and care of persons with acute disabling symptoms, especially those considered dangerous to self or others and persons with grave disabilities;
- (5) Continuity of care and treatment for persons disabled as a result of a mental disorder who need assistance in using available mental health or other community resources; and
- (6) Programs in the community which enhance the ability of the general population to cope with stressful life situations and prevent the onset of mental disorder.

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Mental Health Services to Handicapped and Disabled Students
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Under this negotiated net amount contract, the County of Santa Clara receives an allocation from the State for Fiscal Year 1986-87 of \$21,484,875 for mental health services, including the \$222,955 allocation for the mental health assessment, case management, and treatment of handicapped children.,

Pursuant to Paragraph 31(a)(3) of the contract, the County's share of costs is, to be determined under Welfare and Institutions Code Section 5705. This section provides that the net cost of all services specified in the, approved county', Short-Doyle plans shall be financed on a basis of 90 percent state funds and 10 percent county funds, except for state- hospital, services. The 10 percent county contribution is not required for mental health assessments, case management and treatment of handicapped children. Section 3, Chapter 1133, Statutes of 1986.

The Fiscal Year 1986-87 negotiated net amount contract provides generally that the County "shall provide accessible appropriate services in accordance with Federal.. and State regulations. to all eligible clients. " Client, is defined as "a person who, receives services,, pursuant to the Short-Doyle Act. " Handicapped children receive services pursuant, not to the Short-Doyle Act (Welfare & Institutions, Code Division 5 Part 2), but pursuant to the individualized education program provisions of Chapter 1747, Statutes of 1984 and Chapter 1274, statutes of 1985 (Government Code Section 7570 et seq.).

The services to be provided to handicapped children under Chapter 1747, Statutes of 1984 and Chapter 1274, statutes of 1985 are not specifically referred to in the contract, except insofar as the dollar allocation has made. The costs of providing-*the mandated services and the services required by the contract, excluding the costs associated with the mental health assessment, case management, and treatment of handicapped children, exceed the state allocation and required county match.

As calculated under Welfare and Institutions Code Section 5705, the County's share of cost for the entire Short-Doyle program would be \$2,547,225. The County, however, has budgeted an additional \$4,933,871 in general county funds for mental health services (referred to as "county overmatch"). County overmatch has been used to fund the cost of assessment, case management, and treatment of handicapped children program which is in excess of the \$222,955 State allocation to the County.

V. Cost Savings

There are no cost savings attributable to Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2, California Administrative Code, Division 9.

VI. Petition

We request that the requirements of Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 California Administrative Code Division 9 officially be declared state mandates, and that reimbursement in full be declared for all costs associated with the mandate.

VII. Declaration.

I, Ken Meinhardt, M.D., as Director of the Mental Health Bureau for the County of Santa Clara, am familiar with the facts described in this petition. In this capacity, I am responsible for planning and implementing mental health services for the County of Santa Clara. I have been employed by the County of Santa Clara since 1966, and have been responsible for planning and implementing mental health services since, 1981.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to any matters which are therein stated as information or belief, and as to those matters I believe them to be true.

July 30, 1987
Date

Ken Meinhardt
Ken Meinhardt, M.D.

San Jose, California
Place

Department 1-14-87 rrz upon return send copy to Controller. 2 to 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

NEGOTIATED NET AMOUNT CONTRACT

FY 1986-87

BETWEEN

STATE DEPARTMENT OF MENTAL HEALTH

AND

SANTA CLARA COUNTY

December 23, 1986

EXHIBIT "D-1"

NEGOTIATED NET AMOUNT CONTRACT INDEX

Fiscal Year 1986/87

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CONTRACTOR'S COPY

CONTRACTOR
STATE AGENCY
DEPT. OF GEN. S.
CONTROLLER
JAN 13 1987
received pink tagged original & sent copy to Contr. Dir. Health Dept. has received all

AGREEMENT, made and entered into this 1st day of July, 19 86,
State of California, by and between State of California, through its duly elected or appointed,
and acting

OFFICER ACTING FOR STATE
Director/Div. of Admin. State Department of Mental Health' (DMH)
NUMBER 86-77100
County of Santa Clara
called the Contractor.

ESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State
after expressed, does hereby agree to furnish to the State services and materials, as follows:
h service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)

reas, the Department of Mental Health (hereinafter referred to as STATE)
ministers the Short-Doyle Act, Welfare and Institutions Code, Sections 5600
seq., which provides for the rendering of mental health services in
community settings throughout California; and

reas, the STATE is desirous of negotiating a net amount contract with
Santa Clara County (hereinafter referred to as CONTRACTOR or COUNTY) for the
provision of mental health services to its residents; and

reas, the COUNTY is agreeable to the rendering of such services on the terms
conditions hereinafter set forth; and

reas, such agreements are authorized and provided for by the provisions of
Section 5705.2(c) of the Welfare and Institutions Code;

Therefore, the STATE and the COUNTY do hereby enter into the following
Agreement:

provisions on the reverse side hereof constitute a part of this agreement.

WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		CONTRACTOR			
Department of Mental Health		CONTRACTOR (IF OTHER THAN AN INDIVIDUAL STATE WHETHER A CORPORATION, PARTNERSHIP, ETC.)			
AUTHORIZED SIGNATURE <i>Lynn E. Whetstone</i> 2-2-87		BY (AUTHORIZED SIGNATURE) <i>Deanne McKenna</i>			
Dep. Director, Div. of Administration		TITLE Deanne McKenna Chairperson, Board of Supervisors			
		ADDRESS			
ISSUED ON <u> </u> SHEETS, EACH BEARING NAME OF CONTRACTOR					
Department of General Services Use Only		AMOUNT ENCUMBERED \$ 26,197,492		PROGRAM/CATEGORY (CODE AND TITLE) Local Assistance	
UNENCUMBERED BALANCE \$		OPTIONAL USE		FUND TITLE General	
ADJ. INCREASING ENCUMBRANCE \$		ITEM 4440-131-001 4440-101-001		CHARTER 186	STATUTE 1986
ADJ. DECREASING ENCUMBRANCE \$		FISCAL YEAR 1986			
		OBJECT OF EXPENDITURE (CODE AND TITLE) Negotiated Net Amount Contract			
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.		B.R. NO.	
SIGNATURE OF ACCOUNTING OFFICER <i>C. H. Macey</i>		DATE 1/16/87			
I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1209 have been complied with on 245 document is exempt from review by the Department of Finance.					
SIGNATURE OF OFFICER SIGNING ON BEHALF OF THE AGENCY <i>John McKenna</i>		DATE 1/26/87			

FEB 03 1987

1. The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this contract.

2. The Contractor, and the agents and employees of Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.

3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.

4. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.

5. Time is the essence of this agreement.

6. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

7. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

This contract is in compliance with all
the provisions of SAM 1240-1247.
Pertinent information and materials
are attached in accordance with SAM-

ARTICLE I: STANDARD TERMS AND CONDITIONS

1. The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation* who may be injured or damaged by the Contractor in the performance of this contract.

2. The Contractor, and the agents and employees of Contractor, in the performance of this agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.

3. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.

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7. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided

8. Authority

This agreement is authorized by, and subject to, the provisions of Section 5705.2 of the Welfare and Institutions Code (See Exhibit "A").

9. Control Requirements

This agreement is subject to all applicable federal and state laws and regulations... The provisions of this contract are not intended to abrogate any provisions of law or regulation existing or enacted during the term of this contract.

10. Amount Of Contract

The **total net** amount of State General Fund dollars payable by the State to the County under this contract shall not exceed **\$26,197,492**. The County share of state hospital costs shall be offset against this amount.

11. Term Of Contract

The term of this contract shall be from July 1, 1986, through June 30, 1987. The State and the County agree that, in the event that a new contract **is** not negotiated and executed prior to July 1, 1987, this contract will be extended in full force and effect in **all** of its terms until October 1, 1987, or until the new contract is signed for 1987/88, whichever occurs first.

12. Chief Negotiator

- a. The State has designated the Department of Mental Health's Deputy Director of the Division of Community Programs to be its Chief Negotiator.
- b. The County has designated the Director of County Mental Health to be its Chief Negotiator.

13. County Responsibility For Operation/Maintenance

The County agrees to furnish all space, facilities, equipment, and supplies necessary for its proper operation and maintenance.

1a. *Conflict Of Interest

The County affirms that it presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interests, direct or indirect, which would conflict in any manner or degree with the performance of **services** under this agreement. The County further agrees that, in the performance of this contract, no person having any such interest shall be employed or retained under this contract except as mutually agreed by both parties.

The State agrees that persons having personal or professional conflict with the intentions and goals of this contract will not be assigned to the task of monitoring this contract.

15. State Holds County Harmless Against Claims And Losses

The State agrees to indemnify, defend and hold harmless the County, its officers, agents and employees from and **against any** and all claims and losses whatsoever, accruing or resulting to any person, firm or corporation for damage, injury or death arising out of or connected with ~~the State's performance under the terms of this~~ agreement. The State agrees to provide consultation and assistance to the County in any lawsuit challenging the validity of the statutes or regulations pursuant to which **this** contract was executed..

16. Nondiscrimination Provision

- a. During the performance of this contract, --the **County and its subcontractors** shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national **origin**, ancestry, physical handicap, medical condition, martial status, age or sex.

The County and its subcontractors shall ensure that the evaluation and treatment of their employees and **applicants** for employment are free of such discrimination.

- D. The County shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.
- c. The County agrees to the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified **handicapped** persons in all

federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Welfare' Agency, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

17. Use/Reproduction of Data

The State reserves the right to use and reproduce all reports and data produced and delivered pursuant to this agreement, and reserves the right to authorize others to use or reproduce such materials, unless of a confidential nature.

18. Copyrights/Patents

Except as provided in this agreement, the County may seek patents or copyrights for inventions, copyrightable materials or other original work product which has been commissioned, funded or developed by the County with funds provided by the Department, or otherwise produce in performance of this contract, or in contemplation thereof, subject to the rights of the Department as set forth in this section.

Copyrightable materials, for the purposes of this section, may include, but not be limited to, data, plans, drawings, specifications, reports, operating manuals, notes or other consultant work. The State shall have the right to manufacture, reproduce, publish, use and/or distribute all such inventions or copyrightable material. Upon any such inventions or copyrightable materials shall be the statement: "COPYRIGHTED/PATENTED (as appropriate), YEAR (as appropriate), BY [insert name of contractor]; REPRODUCED WITH PERMISSION."

No further manufacturing, reproduction, publication, use or distribution shall be made without permission of the County. All copyrights or patents to which this clause is applicable shall be in the name of the County. If any such inventions are patentable, or any such original work product or materials are copyrightable, the County may patent or copyright same except that, whenever any such patents or copyrights are applied for or sought by the County, or any employee or assignee thereof, the County shall promptly and fully report such fact to the State, which reserves a royalty-free, nonexclusive and irrevocable license to manufacture, reproduce, publish, use and/or distribute same.

Any revenues derived from the sale of such invention or copyrighted materials by the County, or any employee or assignee thereof, shall be reported to the State and utilized by the County for the benefit of persons with mental illnesses.

19. Disputes

Should a dispute arise under this contract, the County shall, prior to exercising any other remedies which may be available, provide written notice of the particulars of such dispute to:

Chief Deputy Director
Department of Mental Health
1600 9th Street
Sacramento, CA 95814 ,

Such written notice shall contain the contract number. The Chief Deputy Director shall meet with the County, review the factors in the dispute, and recommend a means of resolving the dispute before a written response is given to the County.

20. Congressional Appropriation Of Funds

- a. It is mutually understood between the parties that this contract may have been written before ascertaining the availability of congressional appropriation of funds for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the contract were executed after that determination was made.
- b. It is mutually agreed that, if the Congress does not appropriate sufficient funds for the program, the State has the option to void the contract or to amend the contract to reflect any reduction of funds. Such amendment, however, shall require County approval.
- c. This contract is subject to any additional restrictions, limitation, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this contract in any manner.
- d. The State and the County agree that if Congress enacts such changes during the term of this contract, both parties shall meet and confer to renegotiate the terms of this agreement affected by

the restrictions, limitations, conditions, or statute enacted by Congress.

I. / , ,

21. Statutory/Regulatory Amendments

This contract is subject to any restrictions, limitations, or conditions enacted by the Legislature and contained in the Budget Act or any statute enacted by the Legislature which may affect the provisions, terms, or funding of this contract in any manner. The State and the County mutually agree that if statutory or regulatory amendments occur during the term of this contract which affect this contract, both parties shall meet and confer regarding the changes and shall renegotiate the terms of this agreement affected by the statutory or regulatory amendments.

22. Confidentiality Of Records

- a. The County shall protect from unauthorized disclosure, names and other identifying information concerning persons receiving services pursuant to this contract, except for statistical information not identifying any client, or when disclosure is authorized by federal or state statute.
- b. The County shall not use such identifying information for any purpose other than carrying out the County's obligations under this contract, except when disclosure is authorized by federal or state statute..

23. Timely Communication Between State And County

- a. The State shall report to the County in a timely manner any public or private inquiries, complaints, or reports which shall affect the operation of county mental health programs.
- b. The County shall report to the State in a timely manner any special incidents which may have impact on statewide operation of the mental health system.

24. Revenue Collection Policy

The County shall conform to all policies and procedures regarding revenue collection issued by DMH under the provisions of the Welfare and Institutions Code, Sections 5717 and 5718.

25. Expenditure of State General Funds

The County agrees that all funds paid out by the State shall be used exclusively for providing mental health services, including defraying operating and capital costs, and allowable County overhead (Welfare and Institutions Code, Section 5705.2(c)(7)).

26. Mental Health Advisory Board

Pursuant to Welfare and Institutions Code, Section 5705.2(e), the County shall keep the local Mental Health Advisory Board apprised of issues relating to the net amount contract with the State.

27. Definitions

- a. "Client" means a person who receives services pursuant to the Short-Doyle Act and is used interchangeably with the term, "patient".
- b. "Negotiated Rate" means the rate which is negotiated between the State and the County as the payment for services delivered on a per unit of service basis. The negotiated rate is calculated by dividing the adjusted gross by the total units. Such a rate is fixed and is not subject to retrospective cost adjustment. (This applies to Short-Doyle/Medi-Cal units only.)
- c. "Negotiated Net Amount" means the amount which is negotiated between the State and the County that is determined by subtracting the amount of projected revenue from the total budget for services.
- d. "Revenue" means income from government (e.g., Medi-Cal, Medicare, CHAMPUS), as well as non-government, patient-related funds.
- e. "Dedicated Capacity" means the number of service units (e.g., days, visits, staff hours) which will be offered to serve the mental health needs of the County.

ARTICLE II: PROGRAM PROVISIONS28. Program Principles

The State and County agree that the following represents the program principles of the local mental health program:

- a. A continuum of mental health services which are required by statute and which are accessible and acceptable to the county population.
- b. Mental health services which are **culturally and age-** appropriate to the type, amount, and intensity needed to maximize **recovery**.
- c. Mental health services in the least restrictive appropriate environment available with due regard for individual constitutional rights and public **safety**.
- d. Prompt evaluation and care of persons with acute disabling symptoms, especially those considered dangerous to self or others and persons with grave disabilities.
- e. Continuity of care and treatment for persons disabled as a result of a mental disorder who need assistance in using available mental health or other community resources.
- f. Programs in the community which enhance the ability of the general population to cope with stressful life situations and prevent the onset of mental disorder.

29. Access To Services

The County and its subcontractors shall provide accessible, and appropriate services in accordance with federal and state statutes and regulations to all **eligible clients**.

30. Utilization Review/Quality of Care

- a. The County and its **subcontractors** shall establish and utilize systems to review the quality and appropriateness of services in accordance with applicable federal and state statutes and **regulations** (Sections 4070, 4071, 4072, and 5624 of the Welfare and Institutions Code; and Sections

456.3, 456.4, and 456.6 of the Code of Federal Regulations (CFR) operative during the term of this contract. The Mental Health Advisory Board shall participate in and review the annual evaluation process and product.

b. The County shall have a quality, assurance system and an approved quality assurance plan which conforms to DMH standards and guidelines developed pursuant to state and federal regulations and which contains at least the following components:

- (1) Utilization review of all Short-Doyle/Medi-Cal funded inpatient and clinic services.
- (2) Utilization review of all Short-Doyle funded inpatient services.
- (3) Interdisciplinary peer review of the quality of patient care.
- (4) Monitoring of the medication regimens of Short-Doyle clients, including procedures to review:
 - (a) Appropriateness of the dosage levels prescribed.
 - (b) Effectiveness of the medications for the patient.
 - (c) Occurrence of any adverse reactions.
 - (d) Extent of patient compliance with medication plans.
 - (e) Level of patient information and ability to manage his/her own medication regimen.

c. The State shall not issue policies or directive; during the term of this agreement, which change the utilization review requirements to be met by the County. The State shall not amend previously agreed-upon utilization review policies and directives unless such policies and directives apply to the entire State mental health system, or are negotiated with the County prior to their implementation.

d. The State shall review the existence and the effectiveness of the County's and subcontractors* utilization review systems in accordance with applicable federal and state laws and regulations,

ARTICLE III: FISCAL PROVISIONS

31. Payment Provisions

- a. The total amount payable by the State to the County' under this agreement shall be in accordance with the following schedule:

(1) State General Funds

- (a) The total net amount of State General Fund dollars payable by the State to the County under this contract shall not exceed \$26,197,492. The County share of state hospital costs and any monthly claim paid to the County under the provisions of DMH Policy Letter 86-29 shall be -offset against this amount.
- (b) The State shall pay the County at the beginning of each month, 1/12 of the contract amount in accordance with the budget attached hereto and labeled Exhibit "B".
- (c) If the contract is extended pursuant to Item 11 of this contract, the source of funds advanced to the county during the extension period shall be the local assistance allocation available to the county for FY 1987-88.

(2) Federal Title XIX Funds

- (a) The County shall be reimbursed federal funds (subject to the availability of-such funds) for the cost of services rendered to federally eligible Medi-Cal beneficiaries. Reimbursement of expenditures will be made to the County upon receipt of these funds from the Department of Health Services in accordance with current procedures.
- (b) The rates for claiming Medi-Cal reimbursement shall be in accordance with Exhibit "C" These rates are fixed and are not subject to cost adjustment. The contractor shall conform to current policies and procedures regarding the preparation and submission of Short-Doyle/Medi-Cal claims.

(3) County Share Of Costs

The County share of costs shall be determined in accordance with Welfare and Institutions Code, Section 5705. Such costs shall be computed and entered in Exhibit "B". This amount, regardless of actual cost, shall be bound in accordance with Section 5702(b)(+) of the Welfare and Institutions Code.

(4) county Overmatch

Section 5705.2(b)(1) of the Welfare and Institutions Code does not apply to County overmatch and such funds shall not be bound.

b. State Hospital Costs

- (1) The County's share of cost of 15% shall be deducted from the monthly claims. This percentage will be applied to the actual net cost of state hospital services, based upon the actual number of days used.
- (2) It is the intention of the parties that the County's usage shall not exceed the number of days allocated. If the County's usage exceeds the number of allocated days, the County shall be assessed for such excess usage in accordance with the statewide policy in effect on execution of this contract.
- (3) The County will not be entitled to any savings resulting from the planned or unplanned underuse of its allocated days unless a specific proposal for underuse and savings is negotiated and approved by the Department.
- (4) The net cost of state hospital services shall be based on the average cost per day less projected revenues multiplied by 27,343 days. The State and County agree to mutually plan the development of state hospital services that are appropriate for County residents referred to the state hospitals.

To the extent that resources are available in the budget, needed program changes can be made in a timely fashion, and the needs of all local programs using the particular state hospital are taken into consideration, such services shall be inaugurated during the 1986-87 fiscal year.

c. Categorical Funds

Any funds included in the negotiated net amount that by Department policy are to be expended in specified program categories may only be expended in those categories.

32. Cost Report

The County and its providers shall submit year-end cost reports to the State no later than November 30, 1987. The cost reports shall be submitted in accordance with the State's CR/DC system requirements, but will not be used for fiscal year-end settlement of Short-Doyle or Short-Doyle/Medi-Cal services.

ARTICLE IV: CONTRACT ADMINISTRATION

33. Contract Objectives

a. Dedicated Capacity: Program

The program's dedicated capacity is the provision by the County of the mode and service capacity as negotiated by the County and the State. The dedicated capacity agreed upon can be found in Exhibit "F".

The County shall bear the financial risk in providing any and all mental health services to the population described and enumerated in the approved contract within the net amount. The County is responsible to ensure that services are offered throughout the term of the contract. The State assumes the risk that fewer service units will need to be provided.

b. Dedicated Capacity: Funding

The program's total funding is intended to meet the expenses of the program's dedicated capacity. This total will be a combination of fixed funds (bound by law) such as Short-Doyle State General Funds and legally required County match and variable funds from Short-Doyle/Medi-Cal federal participation, Medicare, patient fees and insurance, grants, and other miscellaneous sources.

The County assumes the risk and responsibility for the collection of the variable funds. The State assumes the risk of the approval of expenditure of the fixed funds even if dedicated capacity is underutilized.

34. Accrued Savings

The county shall propose alternative uses for funds which are not expended for mental health purposes during the contract period., The State and the County agree that accrued savings may be used for the purposes described in Exhibit "H", "Approved Uses of Accrued Savings". Exhibit "H" may be amended by mutual agreement of the State and the County. Exhibit "G", "Allocation Savings Detail", will be completed showing the purposes to which the prior year savings will be used.

35. Contract Amendments

This contract may be amended by mutual consent. However, the State and the County shall not amend the contract after March 1 of the fiscal year unless amendments are the result of statutory and regulatory amendments. Should either party, during the term of this contract, desire a change in this contract, such **change shall** be proposed in writing to the other party.

36. Contract Termination Or Non-Renewal

This agreement may be cancelled at any time by either party for reasonable cause related to a substantial **violation** of the terms of this contract by giving sixty (60) days written notice to the other party. Should the agreement be cancelled, the County shall provide necessary documentation to the State for the purpose of initiating a Short-Doyle plan.

37. Contract Monitoring

a. Purpose

The State shall monitor the County program to assure compliance with contract objectives.

b. Method

The County shall provide relevant information to the **State** on a monthly basis for the purpose of contract monitoring.

A State representative **shall** meet with County mental health representatives monthly, or as needed, to discuss the information submitted to the State and any problems that might be arising.

The State and the County shall mutually develop acceptable performance variances. These variances shall determine when action should be taken to resolve the underlying problems.

In addition, pursuant to Welfare and Institutions Code Section 5705(b)(1) and **5705.2(c)(3)**, the County shall provide the State any other information it may need to monitor the contract.

38. State Evaluation

The County understands that the product(s) and the staff services provided in fulfillment of the requirements of this-contract will be evaluated by the State in accordance with applicable federal and state statutes and regulations.

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ARTICLE V: SUBCONTRACTS

39. Subcontracts

Subcontracts for which negotiated rates or negotiated **net amounts have** been approved by the State in the past will not require the County to **complete** the Policy" Letter DMH 84-10 process. NNA or NR contracts between the County and providers must be listed in Exhibit "E". Any new subcontract or change to an existing contract completed after this **agreement has** been signed is subject to the **provisions of DMH 84-10.**

40. Subcontracts In Excess Of \$10,000

The County agree= to place in each **of** its subcontracts, which are in excess of \$10,000 and utilize State funds, a provision that: **"The** contracting parties shall be subject to the examination **and audit** of the Auditor General for a period of **three** (3) years after final payment under **contract (Government Code Section 10532).**"

ARTICLE VI: REQUIRED DATA

41: Records Maintenance

a; **The County agrees** to maintain books, records, documents, and other evidence necessary to facilitate contract monitoring.

b. The County shall maintain adequate clinical and fiscal records relating to patients served under the terms of this contract, as required, to meet the needs of the State in monitoring quality, quantity, and accessibility of services. Information on each individual patient shall include, but not be limited to, admission records, diagnostic studies and evaluations, patient interviews and progress notes, and records of services provided by various service locations, in sufficient detail to make possible an evaluation of services provided and compliance with this contract.

c. The County shall maintain on file and have readily accessible to the State:

- (1) The name of the agency or agencies which, provide conservatorship investigation and administration/case management services.
- (2) Information about use of mental health services by minority populations.
- (3) A quality assurance plan approved by the State and any approved changes to the plan.
- (4) An affirmative action plan adopted by the Board of Supervisors.
- (5) Evidence of efforts to maintain equitable minority representation on the Mental Health Advisory Board and, if needed, a timetable achieving such representation.
- (6) State-approved Certification Review Hearing procedures (Welfare and Institutions Code, Section 5651(e)(3)).
- (7) A State-approved plan for providing case management services (Welfare and Institutions Code, Section 5651(e)(4)).
- (8) The name of the patients' rights advocate. Whenever the advocate position is vacated and a new appointment is made, the County shall

notify the Patients' Rights Office, State
Department of Mental Health.

42. Submission of Reports

a. "The County shall submit to **the State** monthly; **within**
60 days of the month of service:

(1) A minimum **set** of **data** on each client **per DMH**
Policy Letter 84-11 or subsequent DMH policy.

b. The County shall submit to the State quarterly:

(1) A **report on convulsive treatments administered**
, (Form MH 1699), pursuant to Welfare and
Institutions Code, Section 5326.15.

(2) A report on services provided to persons
detained in jail facilities (Form MH 3823),
pursuant to Welfare and Institutions Code,
Section 5402.

(3) A report on involuntary detentions (Form MH
3825), pursuant to Welfare and Institutions
Code, Section 5402.

(4) A report on conservatorships established by the
Superior Court of the County (Form MH 3824),
pursuant to Welfare and Institutions Code,
Section 5402.

(5) A report of denial of rights/seclusion and
restraint (Form MH 308), pursuant to Welfare
and Institutions Code, Section 5326.1.

ARTICLE VII: EXHIBITS

43. Contract Exhibits

The County agrees to provide the information and offer the services in accordance with Exhibits "A" through "E" which are attached thereto and by this reference hereby made a part of this agreement:

- Exhibit A - Welfare & Institutions Code, Section 5705.2
- Exhibit B - Negotiated Net Amount' Summary
- Exhibit C - Short-Doyle/Medi-Cal Rate
- Exhibit D - Children's Services
- Exhibit E - NNA/NR Contracts Between County and Providers
- Exhibit F - Allocation Detail
- Exhibit G - Allocation 1985-86 Fiscal Year Savings Detail
- Exhibit H - Approved Uses of Accrued Savings

**Welfare & Institutions Code
Section 5705.2**

**Amended by
Stats. 1983, Ch. 1207**

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SEC. 3. Section 3903.2 of the Welfare and Institutions Code is amended:

5705.2. (a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given preference in contracts for services under this division.

(b) Negotiated net amounts or rates may be used as the cost of services only in accordance with the following provisions:

(1) A negotiated net amount shall be determined by calculating the total budget for services for a program or a component of a program, less the amount of projected revenue from nongovernment, patient-related funds. This net amount shall be negotiated between the provider of services and the county mental health program, and may be used by providers in contracts with the county. The negotiated net amount shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the net amount. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should

date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with the provisions of Section 5705.1. Once the negotiated net amount is approved by the State Department of Mental Health, all participating government funding sources shall be bound to that amount as the cost of providing all or part of the total county mental health program as described in the county Short-Doyle annual plan for each fiscal year to the extent that the governmental funding source participates in funding the county mental health program. Any federal authorization or any waiver that is necessary to allow Medi-Cal funds for mental health services to be bound pursuant to this paragraph, shall be sought by the State Department of Mental Health and the State Department of Health Services. Where the State Department of Health Services promulgates regulations for determining reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program, those regulations shall be controlling only as to the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and rendered to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan or contract.

(2) A negotiated rate is the payment for services delivered on a per unit of service basis. This rate shall be negotiated between the provider of services and the county mental health program. The negotiated rate shall be submitted to the State Department of Mental Health prior to the commencement date of the contract. No contract shall become final until the State Department of Mental Health has approved the rate. If approval is received after the commencement date of the contract, the approval shall be retroactive to the commencement date. Should the negotiated rate be disapproved after the commencement date of the contract, the provider shall be compensated for work performed pursuant to the contract in accordance with the provisions of Section 5705.1. Once this rate is approved by the State Department of Mental Health, all participating governmental funding sources shall be bound by that amount as the cost of providing that service for that county mental health program to the extent that the governmental funding source participates in funding the county mental health program. Any federal authorization or any waiver that is necessary to allow Medi-Cal funds for mental health services to be bound pursuant to this paragraph, shall be sought by the State Department of Mental Health and the State Department of Health Services. Where the State Department of Health Services promulgates regulations for

termining reimbursement of Short-Doyle program, these regulations shall be available until the Medi-Cal program, these regulations shall be controlling only the rates for reimbursement of Short-Doyle mental health services allowable under the Medi-Cal program and added to Medi-Cal beneficiaries. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program any information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

(c) The director may negotiate net amount contracts between counties and the State Department of Mental Health in lieu of the annual Short-Doyle plan and budgets. Provisions of the contract shall include at least the following:

- (1) Assurance of an adequate quality and quantity of services.
- (2) Provision for access to services by patients residing within the contracting county.
- (3) Statistical and cost reporting necessary to maintain the statewide mental health data base. For the purpose of verifying the information to provisions of the contract and the establishment of a necessary for subsequent contract negotiation, the State Department of Mental Health shall have access to financial and service records.
- (4) A method for reimbursing the State Department of Mental Health for state hospital obligations incurred by the county.
- (5) Assurance that citizen participation as described in Section 06 will be achieved.
- (6) On negotiated net amount contract shall not preclude the county from subcontracting to purchase all or part of the delivery of mental health services from noncounty providers.
- (7) Assurance that all funds paid out by the state under this subdivision shall be used exclusively for the purpose of providing mental health services, which shall include, but not be limited to, paying operating and capital costs.

Contracts entered into under this subdivision shall be subject to all provisions of subdivisions (a) and (b).

(d) It is the intent of the Legislature that, until July 1, 1987, not more than three county contracts as specified in subdivision (c) shall be negotiated. Those contracts shall be effective no earlier than July 1, 1984. Negotiations shall be completed by October 1 of each year and the contract shall be retroactive to July 1 of that year.

(e) It is not the intent of the Legislature to preclude counties from reimbursing providers by using methods other than those in this section when these counties are part of a Short-Doyle and Medi-Cal consolidation program established pursuant to Article 5 commencing with Section 14660 of Chapter 8.8 of Part 3 of Division

(f) Counties that propose to negotiate rate or net amount contracts with the State Department of Mental Health pursuant to subdivision (c) in lieu of the Short-Doyle annual plan shall inform the Mental Health Advisory Board of its intentions in the following ways:

shall submit to the board an outline of issues to be negotiated and the intended agreement on each issue.

(2) At each regular meeting of the board, during the negotiations, the local program director shall inform the board of progress on each issue and shall request the board's advice on how to further proceed on the negotiations.

(g) The county shall bear the financial risk in providing any and all mental health services to the population described and enumerated in the approved contract within the net amount.

(h) This section shall remain in effect only until July 1, 1987, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1987, deletes or extends such date.

SEC. 4. Section 57052 is added to the Welfare and Institutions Code, to read:

5705.2. Negotiated net amounts or rates may be used as the cost of services only in accordance with the following subdivisions:

(a) Negotiated net amounts may be used as the cost of services in a contract which provides for the delivery of all or part of the total county Short-Doyle annual plan for each fiscal year. The negotiated net amount shall be approved by the State Department of Mental Health prior to commencing services for reimbursement. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program cost accounting and any other information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health emphasizing success in program outcome versus providers' expenditures. Contracts entered into pursuant to this paragraph shall be financed within an approved Short-Doyle plan. For negotiated net amounts contracts that provide for the delivery of 75 percent or more of the total county Short-Doyle annual plan, the contracting organization shall bear the financial responsibility for the local match requirement, which shall not include state or federal funds directly allocated to the contracting organizations, for the portion of the county program covered by the contract.

(b) Negotiated rates may be used as the cost of services in contracts by providers with counties. The negotiated rate shall be approved by the State Department of Mental Health prior to commencing services for reimbursement. Providers under this subdivision shall report to the State Department of Mental Health and the local mental health program cost accounting and any other information required by the State Department of Mental Health in accordance with procedures established by the Director of Mental Health.

This section shall become operative July 1, 1987.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for this act to be effective in the 1987-88 fiscal year for effective mental health planning it is necessary that this act take effect immediately.

NEGOTIATED NET AMOUNT SUMMARY

	<u>Regulars-D</u>	<u>CRIS</u>	<u>Homeless</u>	<u>Section 18</u>	<u>Target Supple.</u>	<u>supple. Rates</u>	<u>S.E.P. Program</u>	<u>Total</u>
Adjusted Gross Program Cost	\$38,938,893	1,595,478	1,322,706	503,716	246,999	607,918	287,722	43,215,710
Less:								
Grants	376,624	-0-	-0-	-0-	-0-	-0-	-0-	376,624
Patient Fees	1,134,694	-0-	95,458	20,840	-0-	-0-	-0-	1,250,992
Patient Insurance	828,590	-0-	-0-	-0-	-0-	-0-	-0-	828,590
Medi-Cal Federal	9,425,234	-0-	-0-	-0-	-0-	-0-	-0-	9,425,234
Medi-Cal Non-Federal	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Medicare	1,778,377	-0-	-0-	-0-	-0-	-0-	-0-	1,778,377
Cons. Administration	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Other	169,593	-0-	342,882	-0-	-0-	37,453	39,994	589,922
268 Supp'l Rates/S.E.P.	-0-	-0-	-0-	-0-	-0-	570,465	222,955	570,465
County Overmatch	4,909,099	-0-	-0-	-0-	-0-	-0-	24,773	4,933,872
Total Revenue	18,662,205	-0-	438,340	20,840	-0-	507,918	287,722	19,977,031
Net Cost	20,276,688	1,595,478	884,366	482,876	246,999	-0-	-0-	23,238,679
County Share	2,251,024	159,548	88,437	48,288	24,700	-0-	-0-	2,547,225
1. State Share	18,025,664	1,435,930	795,929	434,588	222,299	-0-	-0-	20,691,454
2. Medi-Cal State Share	4,712,617	-0-	-0-	-0-	-0-	-0-	-0-	4,712,617
3. Medi-Cal Non-Fed	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-
4. Supp'l Rate & S.E.P.	-0-	-0-	-0-	-0-	-0-	570,465	222,955	793,420
I Total Lines 1, 2 and 3	22,738,281	1,435,930	795,929	434,588	222,299	570,465	222,955	26,197,492

COLLAPSED SHORT-DOYLE/MEDI-CAL RATES

FY 1986-87

<u>Service Function</u>	<u>Units of Service</u>	<u>Estimated Cost</u>	<u>Rate</u>
Inpatient	22,959	9,460,098	412
Group	64,982	5,183,698	80
Individual	112,175	10,384,645	93
Hospital-Based Crisis	7,124	1,807,353	254

CHILDREN'S SERVICES

For children's services (ages 0 - 17) specify in the following format the distribution of costs for all services to children (all modes).

	(1)	(2)	(3)	(4)	(5)
				% SGF For Children's Services FY 1983-84	% SGF Allocation Planned For Children and Adolescents FY 1986-87
	<u>Total</u>	<u>Ages 0-17</u>	<u>Ages 0-17 As % of Total</u>		
270 1. Adjusted Gross Program Costs (Local Only)	\$27,654,828	\$4,853,470	17.5%	17.5%	21.3%
2. State Hospital Gross Program costs	3,536,270	\$ 618,844	17.5%	17.5%	27.0%
3. Total Adjusted GROSS Program Costs, All Programs	31,191,098	\$5,472,314	17.5%	17.5%	22.1%

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EXHIBIT D

NNA/NR CONTRACTS BETWEEN COUNTY AND PROVIDERS

The following providers will operate under a negotiated net amount or negotiated rate contract during FY 1986-87:

<u>Provider #</u>	<u>Provider</u>	<u>Mode/CC</u>	<u>Net Amount</u>	<u>Net Rate</u>
4371	Gardner			
	Medication	15/60		\$ 57.42
	Group	15/50		\$ 73.95
	Individual	15/40		\$ 83.43
	Assessment	15/30		\$ 87.06
4357	Chamberlain's			
	Individual	15/40		\$ 85.99
	Day Treatment	10/81		\$ 89.87
4315	Hope			
	Medication	15/60		\$ 68.05
	Group	15/50		\$ 52.03
	Individual	15/40		\$ 85.01
	Assessment	15/30		\$109.05
4308	Adult & Child Guidance			
	Medication	15/60		\$ 45.04
	Group	15/50		\$ 65.01
	Individual	15/40		\$ 87.01
	Assessment	15/30		\$ 96.93
4381	San Jose Children's Health Council			
	Individual	15/40		\$ 91.43
	Assessment	15/30		\$ 91.99
4300	Children's Health Council-Palo Alto			
	Group	15/50		\$ 65.04
	Individual	15/40		\$ 91.99
	Assessment	15/30		\$ 97.01
	Day Treatment	10/81		\$ 91.61
4 3 4 5	The Bridge			
	Medication	15/60		\$ 71.04
	Group	15/50		\$ 53.66
	Individual	15/40		\$ 82.17
	Assessment	15/30		\$ 88.85
	Day Treatment	10/81		\$ 80.00

Exhibit E (continued)

<u>Provider #</u>	<u>Provider</u>	<u>Mode/CC</u>	<u>Net Amount</u>	<u>Net Rate</u>
4301	Eastfield-Campbell	Junior High		
	Individual	15/40		\$ 86.88
	Day Treatment	10/81		\$ 70.00
8305	Eastfield-Las Lomas			
	Individual	15/40		\$ 82.00
	Day Treatment	10/81		\$ 70.99
8338	Eastfield-Carlton			
	Individual	15/40		\$ 81.92
	Day Treatment	10/81		\$ 69.99
8307	Eastfield-Reed			
	Individual	15/40		\$ 91.00
	Day Treatment	10/81		\$ 87.03
8306	Eastfield-George			
	Individual	15/40		\$ 82.49
	Day Treatment	10/81		\$ 70.51
8304	Eastfield-Aftercare			
	Individual	15/40		\$ 73.03
8340	Eastfield-Adolescent	In-Home		
	Day Treatment	10/81		\$172.95
4395	Asian Americans for Community Involvement			
	Medication	15/60		\$ 65.00
	Group	15/50		\$ 55.00
	Individual	15/40		\$ 85.19
	Assessment	15/30		\$110.01

NOTE: These contracts receive Medi-Cal funds on a **negotiated** net rate basis and Short-Doyle funds on a cost reimbursement basis.

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FY 1986-87 ALLOCATION DETAIL

Dedicated Capacity

		-----Units of Service-----					
Funding Source	<u>SGF Amount</u>	<u>Outreach</u>	<u>24-Hour</u>	<u>Day Services</u>	<u>Outpatient</u>	<u>Continuing Care</u>	
Regular Short- Doyle	\$22,515,326	57,791	81,285	54,885	169,538	38,539	
CRTS	1,435,930	-0-	31,912	9,038	2,218	19,591	
Homeless	795,929	7,942	23,027	13,041	-0-	3,842	
273 Jail Diversion Action 18	434,588	-0-	3,110	-0-	-0-	-0-	
Target Supplement Fund	222,299	-0-	-0-	-0-	-0-*	-0-	
Supplemental Rates	570,465	-0-	-0-	-0-	-0-	48,155	
S.E.P.	<u>222,955</u>	<u>-0-</u>	<u>-0-</u>	<u>*+</u>	<u>**</u>	<u>**</u>	
TOTALS	\$26,197,495	65,733	139,334	76,964	171,756	110,127	

* Program has received general approval as an outpatient geriatric diagnostic service.
Detailed program has not been developed at this time.

** Service providers undetermined at this time.

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ESTIMATED SERVICES 7/1/86 THOUGH 6/30/87

Dedicated Capacity

Units of Service

<u>Funding Source</u>	<u>SGF Amount</u>	<u>Outreach</u>	<u>24-Hour</u>	<u>Day Services</u>	<u>Outpatient</u>	<u>Continuing Care</u>
Regular Short-Doyle						1 . . .
CRTS						
Homeless	\$489,000"					3,750 Hours
Supplemental Rates	184,356					<u>16,535 Days</u>
TOTALS	\$ 673,356					

Other
(Operating
Capital
Costs, etc.)

* These funds will be spent in the following areas:

- 1) Additional case management services and overnight vouchers until the new overnight shelter can be completed \$162,600
- 2) Development of new programs benefiting the homeless for tenant education, para-transportation, supportive housing, and a revolving loan fund. 80,800
- 3) Construction and remodeling of facilities for homeless programs, including a dining hall/kitchen for the bed and breakfast program and a fire escape for Costa House 80,000
- 4) Furnishings for homeless programs including the overnight shelter, Costa House, the Bridge Supportive Housing Program and case Mangement. 165,600

TOTAL

\$489,000

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EXHIBIT G

APPROVED USES OF ACCRUED SAVINGS

Program savings accrued during the contract period from July 1, 1986 through June 30, 1987, may be applied toward funding of the following:

Regular Short-Doyle funding will be used for services in the areas

of outreach, 24-hour care, day services, outpatient, or

continuing care.

Categorical funding will be used for services in the appropriate

categorical area, such as services for the homeless mentally ill

or supplemental services for board and care residents.

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT		SUBJECT	BUREAU	C S S	C M H	ADOLE.	NO. CO.	WEST VALLEY	SAV JOSE	SO. a.	C M H	ACUTE	CRIMINAL	INPATIENT	EAST WALL	ACUTE	TOTAL
SUBJECT	NAME	NUMBER	ADMIN	SUBSYSTEM	ADMIN	BY TX	REGION	REGION	REGION	REGION	SUBSYSTEM	ADMIN	JUSTICE	I E P S	PAVIL.	SUBSYSTEM	BUREAU
			4350	4380	4410	4433	444%	4460	4480	4550		4520	4540	4560	4580		
IDENTIFIED REVENUES																	
PATIENT FEES		9714	0	2,000	0	15,777	52,600	99,306	39,000	50,486	257,169	0	e	87,000	0	87,000	346,169
PATIENT INSURANCE		9715	0	0	0	38,826	101,700	177,338	66,000	94,485	478,341	e	0	341,000	0	341,000	819,341
MEDICARE		9490	25,700	0	0	0	49,200	78,691	285,300	50,187	383,378	0	0	1,395,000	0	1,395,000	1,804,078
FED. MEDI-CAL (FED ONLY)		9481	0	47,540	1,143,073	55,500	165,100	286,745	742,035	94,685	2,400,058	0	e	2,177,000	e	2,177,000	4,632,598
SHORT-BOYLE CATEGORICAL																	
-HOMELESS ROLLOVER		9343	0	489,000	0	0	0	0	0	0	0	0	0	0	a	0	489,000
-HOMELESS CURRENT		9343	0	803,810	0	0	0	0	0	0	0	a	0	0	0	0	803,810
-SUPP'L RATES ROLLOVER		9343	0	0	a	0	0	0	e	0	0	e	0	e	0	0	0
-SUPP'L RATES CURRENT		9343	0	575,051	0	0	e	0	e	0	0	e	0	0	0	0	575,051
-JAIL DIVERSION		9343	0	434,588	0	0	0	0	0	0	0	0	0	0	0	e	434,588
-TARGETED RATES		9343	222,299	0	0	0	0	0	0	0	0	a	0	0	0	0	222,299
OTHER REVENUES																	
TATE MANDATED COST		9403	139,000	0	0	0	0	0	0	0	0	e	e	e	0	e	139,000
-AD90 FUNDS		9419	0	0	0	0	0	0	0	0	0	0	19,387	0	a	133,387	133,387
-BLOCK GRANT		9514	0	37,593	56,837	0	0	0	0	0	56,837	0	0	0	0	0	94,430
-AD3632		9716	0	0	84,491	0	0	0	e	0	84,491	0	0	0	0	0	84,491
FEE FOR SERVICE N/C																	
-PHARMACY		9716	e	0	125,000	0	e	0	0	e	125,000	0	0	0	0	0	125,000
SE		9717	0	0	0	0	0	0	0	0	0	0	0	a	3,198,300	3,198,300	3,198,300
YL INCOME		9716	0	0	0	10,010	0	0	0	0	10,010	0	0	0	e	0	10,010
INTRA-CO FROM DRUG ABUSE		9716	4,893	e	0	0	0	0	0	0	0	0	0	e	e	0	4,893
TOTAL IDENT. REVENUE			391,892	2,389,502	1,409,401	1 2 8 , 1 1 3	359,600	562,072	1,052,335	289,763	3,003,204	e 1 3 3 , 3 0 7	4,000,000	3,198,300	7,331,607	13,916,365	
NET			5,206,000	8,119,259	4,414,016	641,432	1,094,920	2,111,630	2,226,541	899,028	11,387,567	2,851,200	1,647,375	4,065,003	169,850	8,733,606	33,446,512

CRTS

1,436

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	C S S SUBSYSTEM	CXH ADMIN	ADOLE. DY TX	NO. CO. REGION	WEST VALLEY REGION	SAN JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT & E P S	EAST WALL PAVIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
		4358	4388	4418	4433	4448	4468	4488	4558		4528	4548	4568	4588		
DETAIL OF CONTRACTS																
SUBJECT 2329																
CATHOLIC SOCIAL SERV			568,866	195,193						195,193					0	763,259
COMMUNITY COMPANIONS (S/D)			685,862							0					a	685,862
COMMUNITY COMPANIONS (B/G)			49,928							0					0	49,928
COMM. LIVING EXPERIENCE			616,233							0					0	616,233
GARDNER			127,821	283,538						283,538					0	411,359
MIRAMONTE			712,811							0					0	712,811
THE BRIDGE (S/D)			398,282	368,582						368,582					0	766,864
THE BRIDGE (BLOCK GRANT)				52,887						52,887					a	52,887
PENINSULA CHIL. CENTER			124,831							0					0	124,831
PUBLIC ADMIN./GAURDIAN			1,171,414							0					a	1,171,414
REHABIL. MENTAL HEALTH			1,693,122							0					0	1,693,122
REHABIL. M H JAIL DIVERSION			427,888							0					0	427,888
JAIL DIVERSION-UNALLOCATED			55,876							0					0	55,876
ZORITA			232,831							0					0	232,831
SUPPL. RATE CONTRACTS																
ALI BABA			24,588							0					0	24,588
BLOCK'S APT			24,588							0					0	24,588
BOJA'S			11,595							0					0	11,595
BRIDGE HOUSE APT			24,588							0					a	24,588
CLAYTON HENOR			15,468							0					0	15,468
KATHERINE LODGE I			24,588							0					0	24,588
MARIU/HEADWAY			24,588							0					0	24,588
MT. VIEW HENOR APT			11,494							0					0	11,494
PARK AVE APT			15,461							0					0	15,461
ST. JOSEPH APT			24,588							0					0	24,588
ST. LOURDES			14,384							0					0	14,384
UNALLOCATED FUNDS			295,196							0					0	295,196
HOMELESS CONTRACTS																
COMMUNITY COMPANIONS			369,528							0					0	369,528
URBAN MINISTRY			314,243							0					0	314,243
THE BRIDGE			55,482							0					0	55,482
PERM HOUSING MENTALLY ILL			114,885							0					0	114,885
MENTAL HEALTH ADVOCACY			36,857							0					0	36,857
HOUSING INDEED PEOPLE			154,499							0					0	154,499
EMERGENCY HOUSING CONSOR			183,442							0					0	183,442
UNALLOCATED FUNDS			187,437							0					0	187,437
ADULT & CHILD GUIDANCE																
ADULT & CHILD GUIDANCE				473,288						473,288					0	473,288
A. A. C. I.				648,862						648,862					0	648,862
CHANDLERIANS				348,374						348,374					0	348,374
CHILD HEALTH COUN. P.A.				174,922						174,922					0	174,922
CHILD HEALTH COUN. S.J.				172,701						172,701					0	172,701
ERSTFIELD CHILD CENTER				1,316,921						1,316,921					0	1,316,921
HOPE REHABIL.				361,785						361,785					0	361,785
SAN JOSE HOSPITAL-CAPT										0	185,945				185,945	185,945
CRESTWOOD										0	58,888				58,888	58,888
CAPITAL CITY										0	12,888				12,888	12,888
HOOPER HOMES										0	12,888		58,888		58,888	58,888
FORMATION & REFERRAL				48,734						48,734					0	48,734
PATIENT RIGHTS		188,274								0					0	188,274
AB 345A ADVOCACY		75,891								0					0	75,891
AB 345A HEARING OFFICERS		59,568								0					0	59,568
GERONT./RN										0					0	62,915
ALMAZEN COUNSELING CENTER		18,888								0					0	18,888

21-Oct-85

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	C S S SUBSYSTEM	C M H ADMIN	ADOLE. DY TX	NO. CO. REGION	WEST VALLEY REGION	SAW JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT & E P S	EAST WALL PAWIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
MISC ADJUSTMENT		4350		4410	4433	4440	4460	4480	4550		4520	4540	4560	4580		
SAW JOSE AMBULANCE			(10,865)	(2,681)						(2,681)			26,000		26,000	13,254
										0			163,000		163,000	163,000
TOTAL CONTRACTS		244,933	8,679,714	4,426,298	0	0	0	0	0	4,426,298	175,945	0	239,000	0	414,945	13,765,890
DETAIL OF PROFESSIONALIZED SERVICES SUBJECT 2322																
EMPLOYEE RELATIONS		22,446								0					0	22,446
COUNTY PERSONNEL		100,009								0					0	100,009
AUDITS		46,424								0					0	46,424
NURSING REGISTRY		0								0					0	a
BILLING SYSTEM		115,114								0					0	115,114
MEDICAR		0								0					0	a
S		a		3,500						3,500			30,000		30,000	33,500
TICKETS		0		1,500						1,500			5,000		5,000	6,500
STUDENT INTERNS		0								0					0	0
CONSULTANTS		30,000		0					93,400	93,400			25,000	74,000	99,800	222,500
PROGRAM EVALUATION		0		0						0					0	0
MOVEMENT DISORDER		0		0						0					0	0
LABORATORY SERVICES		0		54,643						54,643			20,000		20,000	75,443
INTERPRETOR		0		2,000						2,000			1,500		1,500	3,500
SECURITY GUARD		0						16,727		16,727		0			0	16,727
MISCEL. EXPENSES		11,359	10,500			3,351	1,868		0	5,219	37,910	54,481	6,500		99,291	126,457
POOLMAN/SHI		0								0					0	a
RESOURCE PROJECT		0								0					0	0
DAY HEALTH CARE		0								0			15,000		15,000	15,000
CAPITAL CITY		0								0					0	a
TOTAL PROF/SERVICES		325,432	10,500	61,643	0	3,351	1,868	16,727	93,488	116,069	37,910	54,481	104,200	74,888	270,671	783,760

21-0-0-05

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN	CSS SUBSYSTEM	C M H ADMIN	ADOLE. BY TX	NO. CO. REGION	WEST VALLEY REGION	SAN JOSE REGION	SO. CO. REGION	C M H SUBSYSTEM	ACUTE ADMIN	CRIMINAL JUSTICE	INPATIENT & E P S	EAST VAL. PAVIL.	ACUTE SUBSYSTEM	TOTAL BUREAU
		4350	4380	4410	4433	4440	4450	4480	4550		4520	4540	4560	4580		
DETAIL OF RENT OF STRUCTURES																
SUBJECT 2471																
650 S. BASCOM																
-NEW HERITAGE					77,389					77,389					0	77,389
-SACS							20,722			20,722					0	20,722
5671 SANTA TERESA																
-BLOSSOM VALLEY									71,871	71,871					0	71,871
614 TULLY ROAD																
-JOS. NARVAEZ								54,379		54,379					0	54,379
1075 E. SANTA CLARA STR.																
-DOWNTOWN								82,250		82,250					0	82,250
-CSS CASE MANAGEMENT			25,807							0					0	25,807
M. 1ST. STR.																
-CRIM. JUST. ADMIN.							0			0		4,282			4,282	4,282
2635 MOORPARK AVE																
-CLUB HOUSE			172,966							0					0	172,966
VIRGINIA STR.																
-TREATMENT TEAM				25,000						25,000					0	25,000
WILERS										0			12,000		12,000	12,000
WITS NOT FUNDED			(2,809)		(82)				(549)	(631)					0	(3,440)
TOTAL RENT STRUCTURES		0	195,964	25,000	77,227	0	20,722	136,629	71,322	330,980	0	4,282	12,000	0	16,282	543,866
DETAIL OF UTILITIES																
SUBJECT 2775																
6435 BASCOM/2220 MOORPARK	92,567									0					0	92,567
650 S. BASCOM (NL HERITAGE)					20,687			5,477		26,084					0	26,084
FAIRBOYS (FAIRBOYS)						15,166				15,166					0	15,166
6500 AVE. (OCL. COUNTY)						8,338				8,338					0	8,338
EMBORG LANE																
CENTRAL								63,516		63,516					0	63,516
DOW LOWE PAVIL.										0			82,582		82,582	82,582
CAPRI DR (WEST VALLEY)								12,660		12,660					0	12,660
MC KEE (EAST VALLEY)								32,830		32,830					0	32,830
614 TULLY (J. NARVAEZ)								7,255		7,255					0	7,255
ST VALLEY PAVILLION										0				68,000	68,000	68,000
JOINTS NOT FUNDED	(219)				(9,777)	(2,748)	(6,246)	(3,286)		(22,857)					0	(22,276)
TOTAL UTILITIES	92,348	0	0	0	10,830	20,756	75,487	36,799	0	143,792	0	0	82,582	68,000	150,582	386,722

ATTACHMENT # 2

SUMMARY OF CHANGES TO MENTAL HEALTH'S BUDGET
FISCAL YEAR 1986/87

	SALARIES AND BENEFITS OBJECT1	SERVICES AND SUPPLIES OBJECT2	OTHER CHARGES OBJECT 3	FIXED ASSETS OBJECT 4	RESERVES OBJECT6	TOTAL IDENTIFIED EXPENDITURE OBJECT 9	REVENUES OBJECT 9	NET
APPROVED BUDGET	24,686,661	21,928,998	0	0	746,999	47,362,658	13,916,365	33,446,293
C E M A COLA	165,612	0	0	0	0	165,612	0	165,612
(1) ADD/DELETE (Y41/P93) DOWNTOWN CENTER 4480 FUNDED BY FED M/C	a, 496	0	0	0	0	a, 496	a, 496	0
(2) ADD (3) Y41 FOR S E D ASSESS AND CASE MGT							*	
NORTH CO 4 4 4 8	30,658	0	0	0	0	30,658	30,658	0
WEST VALLEY 4460	30,658	0	0	0	0	30,658	30,658	0
SAN JOSE REGION 4480	30,658	0	0	0	0	30,658	30,658	0
BUREAU ADMIN 4350	0	5,000	0	0	0	5,000	5,000	0
CMH ADMIN 4410	0	37,625	0	0	0	37,625	37,625	0
(3) PHARMACY SYSTEM BUREAU ADMIN 4350	0	(25,182)	25,182	140,000	0	140,000	140,000	0
(4) ADD (1) P96 AB 1733 MUSED CHILD SOUTH REGION 4500	30,658	0	0	0	0	30,658	30,658	0
(5) ADD (1) D96 FROM PA/G C S S REP PAYEE 4400	27,154	0	0	0	(1,865)	25,285	0	25,285
(6) ALLOCATE PART OF \$500,000 IN RESERVE C M H CONTRACTS 4410 C S S CONTRACTS 4380	0 0	199,072 205,825	0 0	0 0	(119,483) (205,825)	79,589 0	79,589 0	0 0
(7) SERVICE & SUPPLIES FDR TX TEAM C M H ADMIN 4410	(21,793)	21,793	0	0	0	0	a	0
(8) ADDITIONAL SUPP'L RATES FUNDING C S S CONTRACTS 4380	0	179,590	0	0	0	179,590	179,590	0
(9) ADD (1) Y41 VKLEY HLT PLAN WEST VALLEY REGION 4460	23,170	0	0	0	0	23,178	23,178	0
(10) THE FAMILY PLACE CMH ADMIN 4410 ADOL DY TX 4433	0 (3,000)	3,000 0	0 0	0 0	0 0	3,000 (3,000)	0 0	3,000 (3,000)
(11) TRANSFER W/IN OBJECT 2 CSS ADMIN 4380	0	0	0	0	0	0	0	0
(12) TRANSFER W/IN OBJ 2 CRESTWOOD INCREASE	0	0	0	0	0	0	0	0
(13) RECLASS COLA FOR PSW'S FROM SAL W/D BENEFITS	0	0	0	0	0	0	0	0
	2 8 0 -							
CURRENT MODIFIED BUDGET	25,008,928	22,555,001	25,182	140,000	420,626	48,149,657	14,512,467	33,637,190

2-Oct-85

ATTACHMENT #3

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C N H ADMIN 4410	ADOLE. DV TX 4433	NO. CO. REGION 4440	WEST VALLEY REGION 4450	SAN JOSE REGION 4480	SO. CO. REGION 4500	CWH SUBSYSTEM 4520	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT I E P S 4560	EAST VAL. PAWL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
OBJECT 1																
PERM SALARIES	1185	1,131,830	1,216,240	575,562	496,155	1,112,820	2,002,779	2,401,018	786,365	7,374,699	1,119,974	1,128,084	4,136,972	1,655,865	8,040,895	17,763,664
SALARIES W/O BENEFITS	1186	50,000	0	0	0	0	0	0	0	0	0	75,728	0	0	75,728	125,728
TEMPORARY HELP	1187	0	0	0	0	0	0	0	0	13,125	399,000	58,106	247,562	158,402	863,078	876,196
RETIREE MEDICAL	1183	9,750	9,733	3,750	4,500	8,210	16,070	18,210	6,711	57,062	5,500	12,000	46,254	22,966	86,716	163,270
OVERTIME	1191	0	0	1,179	0	0	0	0	0	1,179	0	32,038	196,478	125,817	354,333	355,512
PREMIUM PAY	1193	504	3,024	504	4,536	3,528	5,544	17,648	4,536	36,208	79,800	65,411	295,571	128,273	629,055	668,871
SALARY SAVINGS	1194	(43,386)	(43,446)	(36,452)	(19,973)	(42,043)	(78,788)	(96,381)	(33,686)	(387,243)	(57,082)	(56,059)	(190,422)	(85,347)	(389,630)	(783,705)
HEALTH INSURANCE	1196	91,650	91,650	35,250	42,300	77,100	147,306	171,100	63,888	536,400	51,700	103,399	430,169	216,200	801,468	1,521,168
FICA	1197	75,767	83,624	36,306	34,138	73,252	133,299	159,547	55,765	492,307	66,695	81,875	329,710	130,596	622,676	1,273,774
RETIREMENT	1198	175,241	188,665	88,897	78,817	173,646	318,562	373,614	122,949	1,147,685	186,026	184,581	685,464	284,105	1,340,256	2,851,847
WORKERS COMP.	1199	11,897	11,950	5,634	5,022	10,941	19,783	23,788	7,751	72,759	15,668	12,473	47,136	21,513	96,790	192,590
TOTAL BENEFITS		363,505	385,639	169,837	163,977	343,238	626,629	746,268	256,264	2,386,213	325,589	399,528	1,538,729	683,532	2,947,378	6,002,663
TOTAL OBJECT 1		1,582,453	1,561,457	710,630	653,410	1,417,543	2,560,574	3,068,545	1,013,559	9,424,261	1,866,561	1,702,836	6,224,890	2,726,542	12,520,829	25,008,928
OBJECT 2																
OVERTIME MEALS	2162	52	0	0	0	0	0	0	0	0	0	2,155	7,300	2,980	12,435	12,487
PHONE	2125	45,000	14,484	58,481	0	19,431	0	22,060	15,570	115,462	0	0	53,000	0	75,000	249,946
	2145	1,200	2,875	539	2,003	3,232	4,984	3,521	1,838	16,117	0	0	59,000	170,734	229,734	249,986
HOUSEHOLD EXPENSE	2161	0	830	0	0	0	0	0	0	0	0	0	15,900	23,020	38,920	39,750
INSURANCE	2171	191,900	0	0	0	0	0	0	0	0	0	0	65,600	29,190	94,790	286,770
MAINT. EQUIPMENT	2211	8,250	9,716	1,577	785	2,155	2,785	1,650	3,210	12,170	0	0	5,300	4,620	9,920	0
MAINT. STRUCTURES	2225	0	3,114	0	0	0	0	0	0	0	0	0	22,500	20,000	42,500	40,056
MED. LAB. SUPPLIES	2251	0	0	463,337	0	0	0	0	0	463,337	0	0	0	0	0	463,337
OFFICE EXPENSE	2301	9,861	15,104	5,655	4,079	5,926	8,894	6,092	9,917	37,363	0	4,633	19,500	14,200	38,333	100,661
PROFESSIONAL SERV.	2322	300,330	16,588	96,268	0	3,351	1,868	16,727	93,400	211,694	37,910	54,481	104,200	74,000	278,671	799,283
CONTRACTS	2329	244,933	9,053,329	4,625,370	0	0	0	0	0	4,625,370	203,355	0	230,000	0	433,355	14,356,987
DATA PROCESSING	2331	638,164	1,828	10,134	539	1,028	1,000	3,004	1,336	17,201	0	0	66,000	7,000	73,000	738,273
REHAB. SERVICES	2333	0	0	0	0	0	0	0	0	0	779,000	0	989,200	105,903	1,874,103	1,874,103
PUBLICATIONS	2401	0	0	0	0	0	0	0	0	0	0	0	5,900	3,100	9,000	9,000
RENTAL EQUIPMENT	2451	13,754	249	2,000	561	4,310	11,396	6,602	5,294	30,163	0	5,818	10,400	10,000	26,218	70,384
RENTAL STRUCTURES	2471	0	195,964	25,000	77,227	0	20,722	136,629	71,322	330,900	0	4,202	12,000	52,000	68,202	595,066
SMALL TOOLS	2501	7,370	5,171	34,270	2,201	3,173	4,185	1,760	4,152	49,741	0	6,373	22,400	37,900	66,673	128,951
EDUCATION EXPENSE	2547	2,000	1,246	3,077	519	5,229	9,354	5,755	2,100	26,114	0	100	1,300	1,000	2,400	31,768
TRAINING EXPENSE	2586	32,697	13,452	14,506	0	0	0	0	0	14,586	0	366	8,300	9,300	17,966	78,621
SUPPORT OF PERSONS	2700	14,000	5,198	1,077	0	0	0	0	1,557	1,977	0	0	15,500	23,600	35,828	56,007
TRAVEL EXPENSE	2751	8,500	3,210	6,307	336	1,077	9,251	3,239	5,813	34,907	0	1,400	2,000	2,000	7,000	48,645
MILEAGE EXPENSE	2752	4,723	20,016	11,842	794	3,448	4,205	8,002	0	0	0	2,155	2,000	0	0	66,598
COUNTY AUTOS	2756	7,000	11,094	0	9,770	12,107	33,290	11,773	7,266	74,206	0	0	5,000	10,000	103,188	103,188
OVERHEADS	2770	1,721,914	0	0	0	0	0	0	0	0	0	0	0	0	0	1,721,914
UTILITIES	2775	92,348	0	0	10,830	20,756	75,407	36,799	0	143,732	0	0	82,502	60,000	150,502	386,722
POSTAGE EXPENSE	2932	7,000	4,000	5,000	0	0	0	0	0	5,000	0	0	0	0	0	16,000
TOTAL OBJECT 2		3,351,276	9,376,668	5,365,240	111,244	85,303	167,421	264,493	210,143	6,231,044	1,020,265	81,691	1,009,002	604,175	3,595,213	22,555,001
OTHER CHARGES	3000	25,102	0	0	0	0	0	0	0	0	0	0	0	0	0	25,102
FIXED ASSETS	4000	140,000	0	0	0	0	0	0	0	0	0	0	0	0	0	140,000
RESERVES	6000	420,626	0	0	0	0	0	0	0	0	0	0	0	0	0	420,626
TOTAL EXPENDITURES		5,439,457	10,938,125	6,075,870	764,654	1,502,846	2,747,995	3,333,038	1,231,702	15,656,105	2,886,826	1,784,527	8,033,972	3,410,717	16,116,042	40,149,729

282

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IV

WEN HEN/HEE
-5805

5005-
5006-

2671 SHAIN LEXSH
-BLOSSOM WLL

614 TULLY ROAD

-JOS. MARVEL
1675 E. SANTA CLARA STR.

-DOKUMENT

016 N. 151. 51R

-CRIM. JUST. ADMIN.

5 MILKPAK ARE
-DUB HOSE

VIRGINIA STR

TRAINING TEAM

NOTES NOT FURNISHED

TOTAL EAST STR.

TOTAL RENT STRUCTURES

DETAIL OF UTILITIES

SUBJECT 2775

6551 S. BOSTON (N. HERITAGE

FAIRWORKS (FAIRWORKS)

SHORELINE AVE. INC. (DILRITY)

CENTRAL

DON LOUE PROVIL.

EC KEE (EAST VALLEY)

114 TULLY, J. NORWICH

ADULTS NOT FUNDED

TOTAL UTILITIES

1

4

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ATTACHMENT #1

MENTAL HEALTH BUREAU'S APPROVED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TY 4430	NO. CO. REGION 4440	WEST VALLEY REGION 4450	SAN JOSE REGION 4460	SO. CO. REGION 4550	C M H SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VAL. PAVIL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
OBJECT 1																
PERSONAL SALARIES	111	1,112,398	1,175,831	562,982	490,245	1,071,107	1,920,746	2,332,873	747,527	7,125,400	1,112,441	1,117,175	4,110,985	1,647,529	7,988,130	17,401,839
SALARIES W/O BENEFITS	1186	50,000	7,128	1,974	4,144	15,444	30,888	32,076	7,128	92,254	1,188	82,161	1,783	1,188	86,320	235,702
TEMPORARY HELP	1187	0	0	0	8,715	0	4,416	0	0	13,123	399,000	58,106	247,562	158,402	863,870	876,195
RETIREE MEDICAL	1183	9,750	9,500	3,750	4,588	8,000	15,258	18,000	6,500	56,000	5,500	32,030	46,250	22,966	66,716	161,966
OVERTIME	1191	a	0	1,179	a	0	a	a	a	1,179	a	65,411	18,478	125,817	354,333	355,512
PREMIUM PAY	1193	584	3,024	504	4,536	3,528	5,544	17,640	4,536	36,288	79,800	295,571	188,273	629,855	668,871	
SALARY SAVINGS	1194	(43,386)	(43,446)	(14,659)	(19,973)	(42,043)	(78,788)	(96,381)	(33,606)	(285,450)	(57,882)	(56,859)	(190,422)	(85,347)	(389,630)	(761,912)
HEALTH INSURANCE	111	91,650	89,300	35,258	42,300	75,200	143,350	169,268	61,100	526,400	51,700	183,399	430,169	216,200	881,460	1,508,818
FICA	1197	75,320	81,399	35,987	33,666	78,269	127,769	154,855	53,165	475,631	66,156	26,681	328,316	135,527	619,600	1,251,950
RETIREMENT	1198	172,233	182,499	87,250	76,633	167,180	298,191	363,860	116,920	1,189,262	184,856	185,793	681,428	283,662	1,335,739	2,799,733
WORKERS COMP.	1199	10,907	11,553	5,530	4,935	10,532	18,921	23,040	7,370	78,320	15,594	12,366	46,881	20,358	95,199	187,987
TOTAL BENEFITS		359,860	374,251	167,687	162,034	331,181	683,481	728,175	245,063	2,237,621	323,006	400,159	1,533,844	681,713	2,938,722	5,910,454
TOTAL OBJECT 1		1,479,376	1,516,788	719,667	650,301	1,379,217	2,486,281	3,014,383	970,640	9,220,497	1,850,433	1,698,991	6,195,001	2,717,575	12,470,000	24,686,661
OBJECT 2																
OVERTIME MEALS	2102	52	0	0	0	0	0	0	a	0	0	2,155	7,300	2,900	12,435	12,487
TELEPHONE	2125	45,000	13,454	58,401	0	19,431	0	22,068	15,570	115,462	a	a	55,000	20,000	75,000	248,946
	2145	1,200	2,875	539	2,883	3,232	4,984	3,521	1,838	16,117	0	0	59,000	170,794	229,794	249,986
WORLD EXPENSE	2161	0	830	0	a	a	0	0	0	a	a	0	15,900	23,028	38,928	39,758
INSURANCE	2171	191,988	a	0	0	0	0	0	3,218	12,170	0	a	117,600	47,600	175,200	357,180
MAINT. EQUIPMENT	2211	8,250	9,716	1,577	785	2,155	2,785	1,650	0	0	0	a	5,300	4,620	42,500	64,856
MAINT. STRUCTURES	2225	0	3,114	a	0	a	0	0	0	0	a	a	22,500	20,000	0	0
MED. LAB. SUPPLIES	2251	0	a	463,337	a	0	0	0	0	0	0	0	0	0	0	463,337
OFFICE EXPENSE	2301	9,861	14,184	2,655	4,879	5,926	8,894	6,092	5,917	434,363	0	4,633	19,500	14,200	38,333	96,661
PROFESSIONAL SERV.	2322	325,432	10,588	61,643	0	3,351	1,868	16,727	93,480	177,069	37,918	54,481	104,200	74,000	270,671	783,760
CONTRACTS	2329	244,933	8,679,714	4,426,290	a	a	0	0	a	4,426,290	175,945	a	239,000	0	414,945	13,765,890
DATA PROCESSING	2331	633,164	1,028	10,134	539	1,028	1,000	3,004	1,336	17,281	a	0	66,800	7,000	73,800	725,273
REHAB. SERVICES	2333	0	0	0	0	0	0	0	0	0	779,800	a	989,200	105,903	1,874,183	1,874,183
PUBLICATIONS	2401	0	0	0	0	0	0	0	0	0	0	0	5,900	3,100	9,000	9,000
RENTAL EQUIPMENT	2451	13,754	249	2,000	561	4,318	11,396	6,682	5,294	38,163	0	5,818	10,400	10,000	26,218	78,384
RENTAL STRUCTURES	2471	0	195,964	25,000	77,227	a	20,722	136,629	71,322	330,900	a	4,282	12,000	0	16,282	543,066
SMALL TOOLS	2501	2,000	4,671	12,477	2,281	3,173	4,185	1,760	4,152	27,948	0	6,373	22,400	37,900	66,673	106,662
EDUCATION EXPENSE	2547	32,697	13,452	14,506	3,877	5,129	5,229	9,354	5,755	2,180	26,114	a	108	1,300	2,400	31,768
ITING EXPENSE	2586	0	0	0	0	0	0	0	0	14,506	0	366	8,300	9,300	17,966	78,621
TRANSPORT OF PERSONS	2700	14,000	5,190	1,077	a	0	0	0	a	1,077	a	0	15,500	20,320	35,820	56,087
TRAVEL EXPENSE	2751	8,500	3,218	6,387	336	1,077	9,251	3,239	1,557	21,847	0	1,400	2,000	3,600	7,000	48,045
MILEAGE EXPENSE	2752	4,723	18,016	8,842	794	3,448	4,205	8,082	5,813	31,981	0	2,155	2,000	2,000	6,955	61,598
COUNTY AUTOS	2756	7,200	11,094	a	9,770	12,187	33,290	11,773	7,266	74,286	a	0	5,600	5,000	10,600	103,100
OVERHEADS	2770	1,721,914	a	0	a	a	0	0	0	0	e	e	0	0	0	1,721,914
UTILITIES	2775	92,567	0	0	11,838	20,756	75,407	36,799	0	143,792	a	0	82,582	68,000	158,582	386,722
POSTAGE EXPENSE	2992	7,000	3,500	5,000	0	a	0	0	0	5,000	0	a	0	0	0	16,369
TOTAL OBJECT 2		4371,597	8,992,053	5,183,750	111,244	85,303	187,421	264,493	218,143	5,978,354	992,855	81,691	1,870,082	650,585	3,595,213	21,928,998
FIXED ASSETS	4000	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
RESERVES	6000	746,999	0	a	0	0	a	0	0	0	a	e	a	a	0	746,999
EXPENDITURES		5,597,972	10,508,841	5,823,417	761,545	1,464,520	2,673,702	3,278,876	1,188,791	15,190,851	2,851,288	1,780,682	8,065,083	3,368,168	16,065,213	47,362,658

24 Oct 85

MENTAL HEALTH BUREAU'S CURRENT MODIFIED BUDGET FISCAL YEAR 1986/1987

SUBJECT NAME	SUBJECT NUMBER	BUREAU ADMIN 4350	C S S SUBSYSTEM 4380	C M H ADMIN 4410	ADOLE. DY TX 4433	N.O. CO. REGION 4440	WEST VALLEY REGION 4460	SAN JOSE REGION 4480	SO. CO. REGION 4500	C M H SUBSYSTEM	ACUTE ADMIN 4520	CRIMINAL JUSTICE 4540	INPATIENT & E P S 4560	EAST VALL. PRVTL. 4580	ACUTE SUBSYSTEM	TOTAL BUREAU
IDENTIFIED REVENUES																
PATIENT FEES	9714	0	2,000	0	15,777	52,600	99,386	39,000	50,486	257,169	0	0	87,000	0	87,000	346,169
PATIENT INSURANCE	9715	0	0	0	38,826	101,700	177,330	66,000	100,143	483,999	0	0	341,000	0	341,000	824,999
MEDICARE	9498	25,700	0	0	0	49,200	78,691	205,300	50,187	383,378	0	0	1,395,000	0	1,395,000	1,804,078
FED. MEDI-CAL (FED ONLY)	9481	0	47,540	1,222,662	55,500	166,100	286,745	750,531	94,605	2,496,143	0	0	2,177,000	0	2,177,000	4,720,683
SHORT-DOYLE CATEGORICAL																
-HOMELESS ROLLOVER	9343	0	489,000	0	0	0	0	0	0	0	0	0	0	0	0	489,000
-HOMELESS CURRENT	9343	0	803,810	0	0	0	0	0	0	0	0	0	0	0	0	803,810
-SUPPL. RATES ROLLOVER	9343	0	179,590	0	0	0	0	0	0	0	0	0	0	0	0	179,590
-SUPPL. RATES CURRENT	9343	0	575,051	0	0	0	0	0	0	0	0	0	0	0	0	575,051
-JAIL DIVERSION	9343	0	434,588	0	0	0	0	0	0	0	0	0	0	0	0	434,588
-TARGETED RATES	9343	222,299	0	0	0	0	0	0	0	0	0	0	0	0	0	222,299
OTHER REVENUES																
-RATE MANAGED COST	9403	139,000	0	0	0	0	0	0	0	0	0	0	0	0	0	139,000
-JRM FUNDS	9419	0	0	0	0	0	0	0	0	0	0	133,307	0	0	133,307	133,307
-BLOCK GRANT	9514	0	37,593	56,837	0	0	0	0	0	56,837	0	0	0	0	0	94,430
-AB3632	9716	5,000	0	122,116	0	30,650	30,650	30,650	0	214,090	0	0	0	0	0	219,090
FEE FOR SERVICE W/C																
-PHARMACY	9716	0	0	125,000	0	0	0	0	0	125,000	0	0	0	0	0	125,000
-AL INCOME	9717	0	0	0	0	0	0	0	0	0	0	0	3,198,300	3,198,300	0	3,198,300
-AL INCOME	9716	0	0	0	10,010	0	0	0	0	10,010	0	0	0	0	0	10,010
-INTRA-CO FROM DRUG ABUSE	9716	4,893	0	0	0	0	0	0	0	0	0	0	0	0	0	4,893
-LOAN FOR PHARMACY	9810	140,000	0	0	0	0	0	0	0	0	0	0	0	0	0	140,000
-AB 1733	9459	0	0	0	0	0	0	0	25,000	25,000	0	0	0	0	0	25,000
-VALLEY HLTH PLAN	9719	0	0	0	0	0	23,170	0	0	23,170	0	0	0	0	0	23,170
TOTAL IDENT. REVENUE																
		536,892	2,569,172	1,526,615	120,113	400,250	615,900	1,091,489	320,421	4,074,796	0	133,307	4,000,000	3,198,300	7,331,607	14,512,467
NET																
		4,902,565	8,368,953	4,549,255	644,541	1,102,588	2,132,095	2,241,549	911,281	11,581,309	2,086,826	1,651,220	4,033,972	212,417	8,784,435	33,637,262

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

A REVIEW OF THE COSTS OF PROVIDING
NONEDUCATIONAL SERVICES
TO SPECIAL EDUCATION STUDENTS

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Office of the Auditor General
660 J STREET, SUITE 300
SACRAMENTO, CA 95814

Thomas W. Hayes
Auditor General

April 29, 1987

P-640

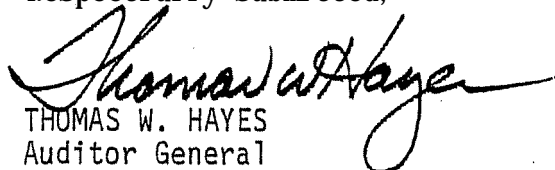
Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the costs of providing noneducational services to special education students.

We conducted this audit to comply with Item 6100-161-001 of the 1986 Budget Act.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-640

A REVIEW OF THE COSTS OF
PROVIDING NONEDUCATIONAL SERVICES
TO SPECIAL EDUCATION STUDENTS

APRIL 1987

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SUMMARY

RESULTS IN BRIEF

The State Department of Education (SDE) received and reported inaccurate data on the costs of providing noneducational services (related services provided by noneducational agencies) to special education students for fiscal year 1985-86. Although the SDE obtained input from representatives from the departments of Finance and Mental Health and the Legislative Analyst's Office in developing a report form for the special education local plan areas (SELPAs) to use in reporting their costs, the instructions on the types of services that the SELPAs should have reported were not clear. As a result, the SELPAs were not consistent in the data they reported, and they did not correctly compile data. Therefore, we cannot determine if the costs that the SDE reported to the Legislature were understated or overstated.

From March 1, 1986, through December 31, 1986, the number of students referred for noneducational services has more than doubled. As a result, according to officials of the local mental health programs, the local mental health offices had exceeded their funding allocations to provide noneducational services to special education students during the first six months of fiscal year 1986-87. Consequently, according to these officials, they are using Short-Doyle funds to continue to provide services to these students.

BACKGROUND

Before July 1, 1986, the SDE, through the school districts and county offices of education, was solely responsible for the education and care of special education students. However, Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, shifted the responsibility of providing psychotherapy and other mental health services

to the Department of Mental Health (DMH) and shifted the responsibility of providing residential care for seriously emotionally disturbed students to the Department of Social Services (DSS). The SDE retains the responsibility for meeting the educational needs of the students. To facilitate this shift in responsibilities, the Budget Act of 1986 provided for the transfer of \$8.1 million of special education funds. The DMH received \$2.7 million, and the DSS received \$5.4 million. In addition, the Budget Act of 1986 allocated \$2 million to the DMH to determine if special education students need noneducational services.

PRINCIPAL FINDINGS

The State Department of Education Received and Reported Inaccurate Data About Funding for Noneducational Services for Special Education Students

Although the SDE obtained input from the departments of Finance and Mental Health and the Legislative Analyst's Office in developing a report form for the SELPAs to use in reporting the costs of providing noneducational services to special education students, the instructions on the types of mental health services the SELPAs should have reported were not clear. As a result, the SELPAs did not all use the same procedures to report cost data. Furthermore, the school districts within the SELPAs did not correctly compile the cost data they reported. For example, 15 school districts in our sample that paid for counseling costs provided by nonpublic schools reported these costs to the SDE. However, the Los Angeles Unified School District did not report the amounts it paid to nonpublic schools for providing counseling services. In addition, officials at six of the ten largest school districts in the State stated that they did not report counseling costs because not all nonpublic schools in these districts separated the costs for counseling special education students from the total cost of educating these students.

Because of these inconsistencies, the SDE reported inaccurate data to the Legislature on the costs of providing noneducational services to special education students for fiscal year 1985-86. Because the cost information is inaccurate, we cannot determine if the amount reported was understated or overstated.

The Number of Special Education Students
Referred for Noneducational Services
Has Increased Since March 1, 1986

From March 1, 1986, through December 31, 1986, the number of special education students referred for noneducational services has more than doubled. For example, the San Mateo County SELPA reported to the SDE that it provided noneducational services to 166 students for fiscal year 1985-86. However, since March 1, 1986, the San Mateo County SELPA has referred 547 special education students to the local mental health programs for assessment to determine whether they need noneducational services.

Officials at five of the local mental health programs in our sample stated that during the first six months of fiscal year 1986-87, they had exceeded their funding allocations and are using Short-Doyle funds to continue to provide services. Short-Doyle funds are used for inpatient hospital, outpatient hospital and clinical services.

From July 1, 1986, through December 31, 1986, an estimated 13 students in the ten counties in our sample have been placed in residential facilities. However, it takes at least four months to identify students needing placement, to assess the students' needs, and to eventually locate a proper facility in which to place the students. Because the process to place students takes so long, the actual costs the DSS may incur to provide residential services cannot yet be determined.

RECOMMENDATION

The State Department of Education and the Department of Mental Health should work together to develop instructions identifying the types of services that the SELPAs should include in reporting their costs of providing noneducational services to special education students. Specifically, the instructions should provide sufficient information so the SELPAs can determine what types of counseling should be reported as related noneducational costs. Once the instructions are developed, the SDE should require the SELPAs to resubmit their noneducational cost data for fiscal year 1985-86. Before the data is compiled, the SDE and the DMH should provide the training necessary to ensure that the SELPAs use consistent procedures to compile the appropriate noneducational cost data.

AGENCY COMMENTS

The State Department of Education and the Department of Mental Health concur with the Auditor General's recommendation. They both agree that the two departments should work together to identify the types of mental health services that the SELPAs should include in reporting the costs of providing noneducational services to special education students.

INTRODUCTION

California's special education programs provide instruction and services to individuals with exceptional needs. These include students with a communications 'handicap such as deafness, students with a physical handicap such as blindness, and students with severe handicaps such as mental retardation or emotional, disturbances'. In April 1986, when the last available count' was made, approximately 393,000 students were served by special education programs. in public schools.

Section 56000 of the Education Code requires that students in California public schools receive special education and related services through the Master Plan for Special Education. Under the master plan, special education local plan areas (SELPAs), which consist of school districts and county offices of education, are responsible for developing and implementing a plan to provide an appropriate education for individuals with special needs.

In addition, Sections 56340 and 56341 of the Education Code require each school district to establish individualized education program (IEP) teams to develop, review, and revise education programs for each student with exceptional needs. These teams are to include a qualified special education teacher, the student's classroom teacher, and one or both of the student's parents. The IEP teams may require that mental health or residential treatment services, hereafter

referred to as noneducational services, be provided to support the student's special educational needs, When the IEP team determines that a student may need noneducational services, the team may refer the student to a local mental health program for assessment. After the assessment, the team may recommend that seriously emotionally disturbed students be placed in residential care facilities. Section 56345 of the Education Code requires school districts or county offices of education to provide the services that are recommended in the student's individualized education program.

Before July 1, 1986, the State Department of Education (SDE), through the school districts and county offices of education, was solely responsible for providing special education services, as well as mental health and residential care services, for special education students. However, Chapter 1747, Statutes of 1984, and Chapter 1274, Statutes of 1985, shifted the responsibility of providing psychotherapy' and other mental health services to the Department of Mental Health (DMH) and shifted the responsibility of providing residential care for seriously emotionally disturbed students to the Department of Social Services (DSS). The SDE retains the responsibility for ensuring that the educational needs of the students are met.

To facilitate the shift in responsibilities,. the Budget Act of 1986 provided for the transfer of \$8.1 million in special education funds for fiscal year 1986-87 from the SDE to the DMH and the DSS. The DMH received \$2.7 million, and the DSS received \$5.4 million. The

Budget Act of 1986 also appropriated an additional \$2 million to the DMH to provide noneducational services. Finally, the Budget Act of 1986 required the SDE to identify the number of special education students receiving noneducational services and the costs for providing these services during fiscal year 1985-86.

In December 1986, the SDE received and reported information from the local education agencies that, in fiscal year 1985-86, these agencies provided psychotherapy and other mental health services to 941 students and residential services to 225 students. The reported costs for providing psychotherapy and other mental health services were approximately \$1.7 million, and the reported costs for providing residential services were approximately \$1 million.

SCOPE AND METHODOLOGY

The purpose of this review was to verify the costs reported by the SDE for providing noneducational services to special education students during fiscal year 1985-86 and to determine whether the funds transferred to the DMH and the DSS exceeded their actual expenditures. We conducted this audit to comply with the Budget Act of 1986.

Because the cost information reported by the SDE is inaccurate, we could not determine whether the amount of funds transferred to the DMH and the DSS are sufficient to meet the noneducational needs of the special education students. However, we

analyzed the costs reported by the SDE by selecting a sample of eight special education local plan areas (SELPAs) and reviewing their methodologies for compiling and reporting data on the costs of noneducational services. In addition, we interviewed administrators of the SELPAs and special education staff at most of the school districts.

We reviewed the cost data reported by 37 school districts in the following eight SELPAs:

Tri-County Consortium (Amador, Calaveras, Tuolumne)
Contra Costa County
Fresno Unified School District
Los Angeles Unified School District
Riverside County Office of Education
San Juan Unified School District
San Mateo County Schools
Santa Clara County (Area I)*

Our site visits included three of the ten largest school districts in the State: the Fresno Unified School District, the Los Angeles Unified School District, and the San Juan Unified School District. In addition, we contacted, by telephone, staff of the remaining seven largest school districts to determine their methodologies for compiling and reporting cost data.

To determine the process for providing noneducational services to, special education students and how the costs of these services were

*Santa Clara County has seven SELPAs.

reported, we interviewed officials from the SDE's Special Education Division, the DMH's Special Populations Branch, and the DSS's Foster Care Program Management Bureau.

To determine the number of students who have been identified as needing noneducational services and the costs incurred for these services, we obtained documentation and interviewed officials of the local mental health offices located in each of the eight SELPAs.

Finally, we presented the results of the audit to representatives from the Department of Social Services and to each of the five SELPAs specifically mentioned in the report. We took the concerns of these agencies into consideration in the audit report.

AUDIT RESULTS

I

THE STATE DEPARTMENT OF EDUCATION RECEIVED AND REPORTED INACCURATE DATA ABOUT FUNDING FOR NONEDUCATIONAL SERVICES FOR SPECIAL EDUCATION STUDENTS

The State Department of Education (SDE), with input from the departments of Finance and Mental Health and the Legislative Analyst's Office, developed a report form for the special education local plan areas (SELPAs) to use in reporting the costs of providing noneducational services to special education students. However, the instructions provided to the SELPAs to use in collecting and compiling these costs were not clear and did not identify the specific types of counseling that should be reported as related noneducational costs. As a result, the SELPAs were not consistent in the way they reported this cost data. Therefore, we cannot determine if the actual amount of funds that the SDE reported for providing noneducational services was understated or overstated.

The Budget Act of 1986 required the SDE to report its total costs for providing noneducational services to special education students during fiscal year 1985-86. In addition, the Budget Act of 1986 required the SDE to develop a standard methodology for the SELPAs to use in identifying their costs of providing these services. This information was required to determine if the amount of funds transferred from the SDE to the Department of Mental Health (DMH) and

the Department of Social Services' (DSS) exceeded the actual expenditures of the local education agencies for providing mental health and residential services.

In developing its report form to compile the costs of providing noneducational services to special education students, the SDE requested that the Department of finance and the Legislative Analyst's Office review the report form. Even though the SDE obtained signatures from the representatives of these agencies indicating that they had reviewed the form, the representatives stated that they did not have sufficient knowledge of the specific types of mental health services that should be reported as noneducational costs. According to the deputy superintendent for specialized programs, the SDE believed that these signatures constituted approval of the report form. In addition, the SDE asked the DMH to provide a definition of "other mental health services" that would be included in the report form.

The School Districts Are Inconsistently Reporting Costs of Providing Noneducational Services

The 37 school districts within the eight SELPAs we reviewed were not consistent in the costs they reported for providing noneducational services to special education students. Furthermore, the school districts did not all, use the same criteria and did not always correctly compile the cost data they reported.

For example, not all of the school districts reported the costs of counseling services provided by nonpublic schools.* Fifteen school districts in our sample paid for the counseling services provided to special education students by nonpublic schools or nonpublic agencies and included those costs in their reports to the SDE.** The Los Angeles Unified School District, however, did not report the costs it paid to nonpublic schools for providing an estimated 1,400 special education students with counseling services. Furthermore, the Los Angeles Unified School District did not report the costs it paid to residential facilities for providing counseling services to 17 students residing at those facilities. The Coordinator of Pupil Services in the Los Angeles Unified School District stated that these costs were not reported to the SDE because the costs were for counseling services only and did not include psychotherapy.

In addition, two school districts within the same SELPA reported the costs, for counseling special education students differently. The Pittsburg Unified School District in the Contra Costa County SELPA did not report the costs paid to nonpublic schools for counseling special education students because the nonpublic schools did not separate counseling costs from the total cost of educating students. The Alhambra School District, in the same SELPA, also paid

*Nonpublic schools include private, nonsectarian schools that serve students with exceptional needs.

**Nonpublic agencies include any private, nonsectarian agency or individual that serves students with exceptional needs.

for the counseling services provided by nonpublic schools but estimated the costs it paid and reported those costs to the SDE as noneducational services.

In addition to reviewing the data reported by the school districts in our sample, we interviewed special education officials of the ten largest school districts in the State to determine if these districts reported costs for the counseling services provided by nonpublic schools. Officials at six of these schools stated that they did not report these costs because not all nonpublic schools in their districts separated the costs for counseling special education students from the total cost of educating these students. Officials at another school district stated that they did not report the counseling costs because they believed that only psychotherapy, not counseling, should be reported. Officials at another school district stated that they did not report the costs for students receiving counseling in nonpublic schools because not all the nonpublic schools separated these costs. Furthermore, when the nonpublic schools did separate the counseling costs, the district did not report these costs because they were for counseling, not psychotherapy. The officials at another school district estimated the costs paid to nonpublic schools for providing counseling, and officials at the remaining school district did not report any costs for counseling or other mental health services because psychologists on the district's staff provided these services.

Two school districts in the Santa Clara County (Area I) SELPA were also inconsistent in reporting the costs of providing noneducational services to special education students. A district representative stated that the Palo Alto Unified School District did not report the costs it incurred for special education students enrolled in a "therapeutic activity group" because the local mental health office did not consider this activity to be a mental health service. However, the Whisman School District, in the same SELPA, reported its costs for the students enrolled in a similar therapeutic activity group.

School Districts Are Not Consistent
in Their Procedures for Compiling
the Costs of Noneducational Services

In addition to differences in the costs they report of providing noneducational services to special education students, the school districts used different procedures to compile their costs. For example, the Redwood City Elementary School District in the San Mateo County SELPA reported the estimated cost of \$30,375 shown on its contracts with nonpublic schools for the services these schools were to provide to special education students. However, the actual cost the school district incurred during fiscal year 1985-86 for providing noneducational services was \$23,505, or \$6,869 less than the amounts shown on the contracts. In contrast, 35 of the other 36 school districts in our sample reported the actual costs for noneducational services, as reflected in their monthly invoices. The remaining school district reported its costs by using both invoices and contracts.

Finally, eight school districts in our sample incorrectly calculated or compiled the cost data they reported, to the SDE. Six of the eight school districts made minimal mathematical errors in their cost data, and four of the school districts excluded costs that should have been included in their data. For example, the San Mateo Union High School in the San Mateo County SELPA incorrectly omitted invoices for counseling costs totaling \$5,367.50. Similarly, the Whisman Unified School District in the Santa Clara County (Area I) SELPA omitted from its data \$2,173.75 for counseling and \$460 for assessing the mental health needs of special education students. Conversely, four school districts included costs in their reports that should not have been included. For example, the San Mateo City School District incorrectly reported \$1,085 in mental health costs that it had incurred in the previous fiscal year. Similarly, the Palo Alto Unified School District incorrectly reported \$160 in counseling costs it had incurred in the previous fiscal year.

Because of the reporting inconsistencies noted above, the SDE reported to the Legislature inaccurate data on the costs of providing noneducational services to special education students for fiscal year 1985-86. Therefore, we cannot respond to the requirement of the Budget Act of 1986 that the Auditor General's Office determine whether the amount of funds transferred to the DMH and the DSS are sufficient to meet the noneducational needs of the special education students.

Administrators in seven of the eight SELPAs in our sample told us that the instructions provided by the SDE were not specific and, therefore,, they were not certain which services were to be reported as noneducational costs. Based upon our review, we conclude that the instructions accompanying the form did not clearly identify the types of mental health counseling that should have been reported. In addition, the administrators said that the SDE provided little training or direction on how to complete the report form. However, an SDE consultant stated that the SDE did provide some instruction on report preparation at the monthly meetings of SELPA directors, but not all SELPA directors attended these meetings. Furthermore, the assistant director of the Special Education Division told us that SDE consultants were available to respond' to questions from SELPA administrators concerning the report form.

Finally, the SDE did not test the report form, which is used for collecting noneducational costs, at any of the SELPAs before the report form was distributed to all of the SELPAs. By testing the form, the SELPAs may have identified potential problem areas and the SDE could have corrected the form accordingly.

CONCLUSION

The State Department of Education received and reported inaccurate data on the costs of providing noneducational services to special education students during fiscal year

1985-86. Although the SDE, with input from the departments of Finance and Mental Health and the Legislative Analyst's Office, developed a report form for the special education local plan areas (SELPAs) to use in submitting their data on noneducational costs, the instructions provided to the SELPAs were not clear. As a result, the eight SELPAs we reviewed differed in the cost data they reported and used different procedures to compile their data. In addition, the SELPAs made errors in compiling their data.

RECOMMENDATION

To ensure consistency in the way the SELPAs report costs for noneducational services to special education students, the SDE and the DMH should take the following actions:

Develop instructions identifying the types of services that the SELPAs should include in reporting the costs of providing noneducational services to special education students. The instructions should provide sufficient information so the SELPAs can determine what types of counseling should be reported to the SDE as related noneducational costs; and

Provide additional training and direction to SELPA directors to ensure that they use consistent procedures to compile the noneducational costs before the data is reported.

Once the agencies have agreed on the types of, counseling services that should be reported, the SDE should take the following actions: ,

Test the revised report form at a sample of SELPAs before distributing the form to all of the SELPAs; and

Require the SELPAs to resubmit their data on noneducational costs for fiscal year 1985-86.

II

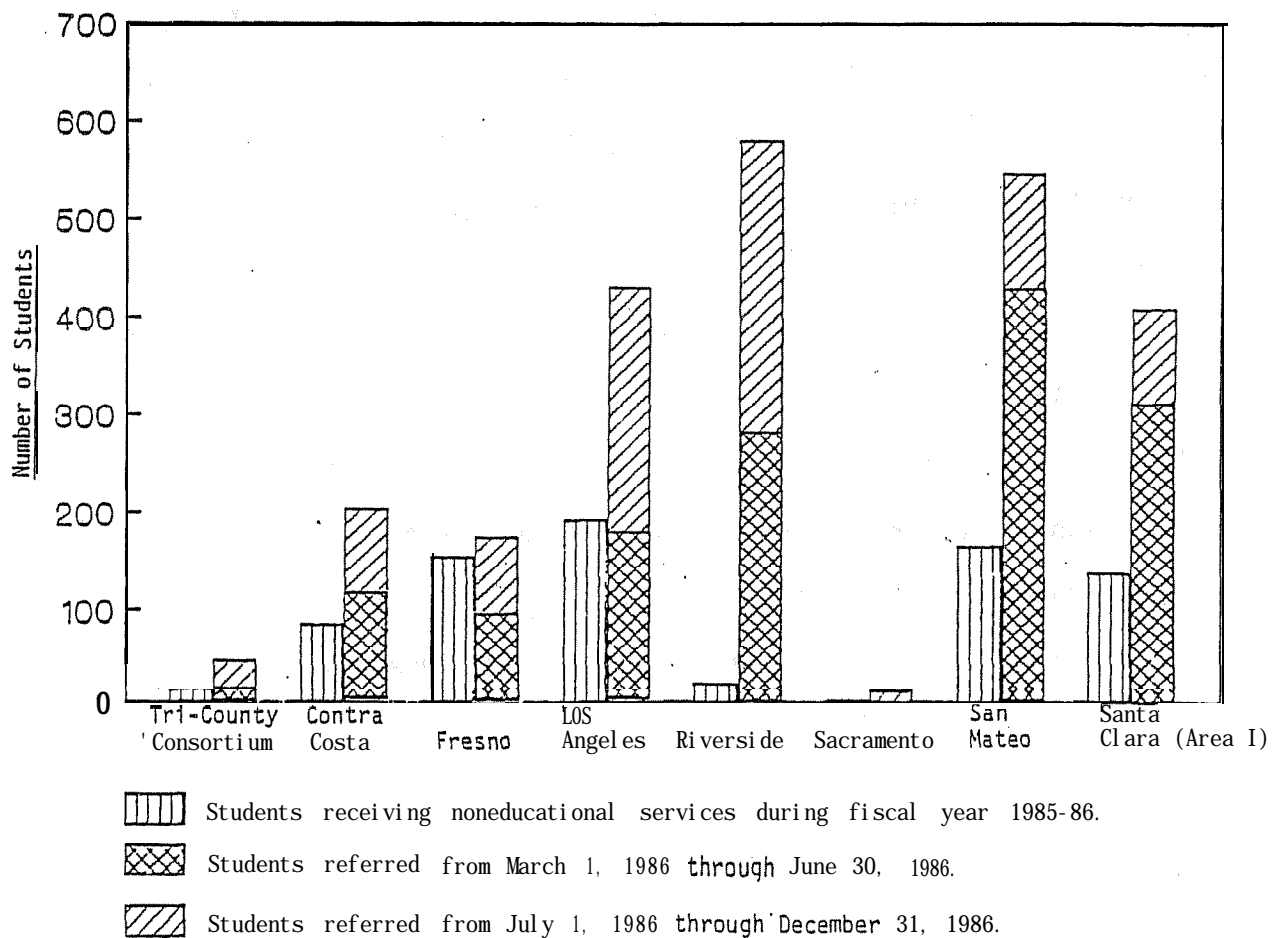
THE NUMBER OF SPECIAL EDUCATION STUDENTS REFERRED FOR NONEDUCATIONAL SERVICES HAS INCREASED SINCE MARCH 1, 1986

Since the SDE reported, the number of students receiving noneducational services and the costs of providing those services for fiscal year 1985-86, the number of students identified by Individualized Education Program (IEP) teams as needing noneducational services has increased.

From March 1, 1986, through December 31, 1986, the number of students referred for noneducational services is more than twice the number of special education students who received services during fiscal year 1985-86. Legislation enabled the DMH to participate on IEP teams from March 1, 1986, through June 30, 1986, and to assess special education students' needs for noneducational services. In addition, legislation implemented on July 1, 1986, requires the Department of Mental Health' to assess special education students' needs for noneducational services and to provide these services to the students. Figure 1 shows that from March 1, 1986, through December 31, 1986, the number of students referred for assessment to the ten local mental health programs in our sample was significantly higher than the number of students reported as being served during fiscal year 1985-86. For example, the San Mateo County SELPA reported to the SDE that, during fiscal year 1985-86, it provided noneducational services to 166

students, However, from March 1, 1986, through June 30, 1986, the IEP teams in the San Mateo County SELPA referred 428 special education students to the local mental health program for assessment. Further, during the first six months of fiscal year 1986-87, the IEP teams in the San Mateo County SELPA referred an additional 119 students to the local mental health programs to determine if they require noneducational services.

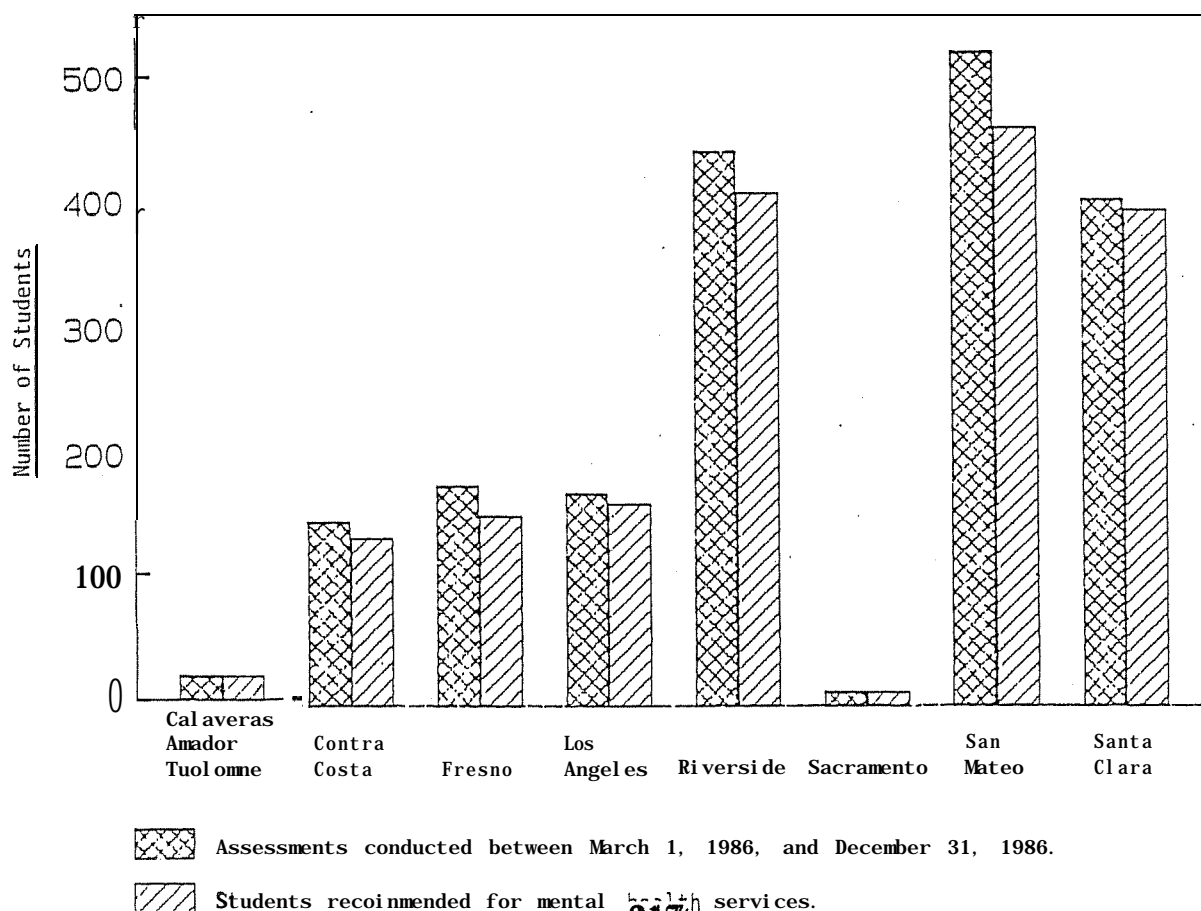
FIGURE 1
STUDENTS RECEIVING NONEDUCATIONAL SERVICES
DURING FISCAL YEAR 1985-86 AND
STUDENTS REFERRED FOR MENTAL HEALTH SERVICES
FROM MARCH 1, 1986 THROUGH DECEMBER 31, 1986



Our review indicates that not only are the IEP teams within the SELPAs referring more students for mental health assessment but also that the local mental health programs are recommending that the majority of the students referred need noneducational services. For example, the Santa Clara County mental health program received 409 referrals from March 1, 1986, through December 31, 1986. The Santa Clara County mental health program recommended noneducational services for 397 (97 percent) of these students. Figure 2 shows the number of students referred that the local mental health programs have then recommended for noneducational services.

FIGURE 2

STUDENTS ASSESSED AND RECOMMENDED FOR
MENTAL HEALTH SERVICES IN TEN COUNTIES
MARCH 1, 1986 THROUGH DECEMBER 31, 1986



Funding of Mental Health Services

Based on our discussions with officials at the local mental health programs in our sample, the funds transferred to the DMH from the SDE are not sufficient to meet the needs of students identified as needing noneducational services. The Budget Act of 1986 provided for the transfer of \$2.7 million in special education funds from the SDE to the DMH for assessing and treating special education students. In addition, the DMH received an additional \$2 million to provide noneducational services to special education students.

The DMH allocated the \$4.7 million it received to the county mental health programs throughout the State. Officials at five local mental health programs in our sample stated that they had exceeded their funding allocations during the first six months of fiscal year 1986-87. As a result, these officials stated that they are using Short-Doyle funds to provide noneducational services to special education students. These funds can be used for other county mental health services including inpatient hospital, outpatient hospital, and clinical services.

Furthermore, some students identified as needing noneducational services are placed on waiting lists because the resources to provide the services are not available. For example, during the first six months of fiscal year 1986-87, the manager of children's mental health services in Riverside County stated that the

local mental health program spent approximately \$207,000 to provide psychotherapy and other mental health services to special education students. However, this office received only \$179,370 from the DMH to provide these services. Furthermore, this manager stated that the local mental health program has had to use Short-Doyle funds to continue to provide the services needed by these special education students. In addition, the Riverside County mental health program placed 61 students on waiting lists because the resources to provide the services were not available.

Funding for Residential Services

Special education students who are classified as seriously emotionally disturbed may require a residential facility placement funded by the DSS. The Department of Finance transferred \$5.4 million of special education funds to the DSS to provide needed residential services to special education students. However, during the first six months of fiscal year 1986-87, an estimated 80 students were placed in residential facilities throughout the State, and, as of December 31, 1986, the DSS has paid approximately \$673,000 to provide residential services for these students. In contrast, the SDE reported that it paid approximately \$1 million to provide residential services to 225 students during fiscal year 1985-86.

The ten counties in our sample have placed an estimated 13 students' in residential facilities during the first six months of

fiscal year 1986-87. Based on our review, the reason so few students have 'been placed in residential facilities since the new legislation was implemented on July 1, 1986, is that the placement process is very time-consuming. For example, it takes at least four months to identify the student needing placement, to assess the students' needs, and to eventually locate a proper facility in which to place the students. In addition, some students who have been identified as requiring residential placement have not been placed because the students may be waiting for an opening at a residential facility that can provide the specific services the students need. For example, one seriously emotionally disturbed student in Sacramento County was identified as requiring residential placement in October 1986; as of March 19, 1987, this student still had not been placed in a residential facility. The program specialist at the San Juan Unified School District stated that a residential facility has been recommended for the student; however, the student cannot be placed in the facility until a bed becomes available. Because the process to place students in a residential facility takes so long, the actual costs the DSS may incur to provide residential services cannot yet be determined.

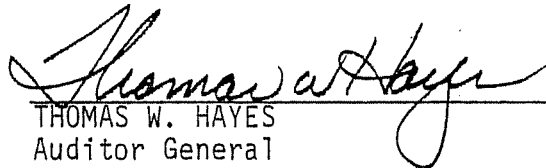
CONCLUSION

Since March 1, 1986, the number of students referred for noneducational services has more than doubled. As a result of the increased number of students needing services, some of the county mental health programs in our sample have exceeded

their funding allocations and are using Short-Doyle funds to continue to provide noneducational services to special education students. The DSS has not exceeded its allocation because only 80 students have been placed in residential facilities during the first six months of fiscal year 1986-87. Because it takes so long to place special education students in these facilities, the actual costs that the DSS may incur cannot yet be determined.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: April 27, 1987

Staff: Robert E. Christophel, Audit Manager
Elaine M. Howle
Mary E. Bensorosky
Keith Kuzmich
James W. Cooper



April 22, 1987

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street Suite 300
Sacramento, CA 95814

RE: P-640

Dear Mr. Hayes:

Thank you for the opportunity to comment on the draft report titled "A Review of the Costs of Providing Noneducational Services to Special Education Students." The study highlights areas where the State Department of Education (SDE) and the Department of Mental Health (DMH) must continue to work together to ensure appropriate and timely services for special education students.

The primary factor in the inconsistency of the cost data reported by the local educational agencies appears to have been the lack of a standardized definition of "other mental health services," specifically the education-related counseling that will now be funded directly by DMH. The need for further guidance in this area is apparent from the example of overreporting of costs described on page 11 of the report. The district that reported the costs for their therapeutic activity group will have those funds transferred to DMH but will still bear the cost of the service as the local mental health office does not consider this to be a mental health service. The variance in the resources available within districts adds to the difficulty of drawing distinct lines between those services that will continue to be provided by the education agencies and those that will now be the responsibility of DMH.

The unavailability of separately identified costs for services provided by most nonpublic schools and agencies further complicated the gathering of consistent data throughout the state. Legislation requiring itemization of costs in contracts with nonpublic schools and agencies **may** be necessary to rectify the problems in identifying costs for related mental health services provided by these organizations. Unless this issue is resolved, inexact data will necessarily be reported in any future efforts to identify the costs of related noneducational services.

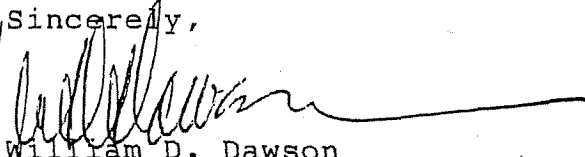
While there were other instances of "clerical" or arithmetic inconsistencies, we found no indications of willful failure to report accurate data.

Thomas W. Hayes
April 22, 1987
Page 2

As noted in the report, staff of SDE and of DMH have discussed the need for a definition of the types of education-related mental health services which will be meaningful to professionals in both fields. We will continue to work together, as recommended, to formulate a definition and will involve staff from the special education local plan areas (SELPAs) in the discussions so that all responsible entities will have a part in the product. If the Legislature requires another report of cost data, we will also involve the SELPAs in testing the form to be used in the data collection efforts.

We are concerned about the reference to the process for students recommended for residential placement taking "at least four months." Federal and state laws require that assessment, development of the Individual Education Program and placement of a child take place within 50 days. This discrepancy between the SDE model and the DMH interpretation of Chapter 26.5 of the Government Code and of Public Law 94-142 needs to be resolved. SDE and DMH staff have provided some inservice to correct the misconceptions in the field and we will continue to work together to ensure timely service to special education students.

Sincerely,



William D. Dawson
Executive Deputy Superintendent

WDD:c

DEPARTMENT OF MENTAL HEALTH
1600 - 9th STREET
SACRAMENTO, CA 95814



(916) 323-8173

April 22, 1987

Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento CA 95814

Dear Mr. Hayes:

Mr. Allenby has asked me to respond to your draft report P-640, "A Review of the Costs of Providing Noneducational Services to Special Education Students."

The Department of Mental Health finds your report generally accurate. We share your concern that the SELPAS' actual expenditures for noneducational services were not reported in a way which would allow an accurate estimate of the funds which should have been transferred from the Department of Education to the Departments of Mental Health and Social Services. We believe that at the time the report forms were developed, that those entities approving the form believed it to be adequate to elicit the information needed. We will make all necessary resources available to implement the recommendation to refine data collection methodology to assist the educational community to report expenditure data.

I wish to clarify two topics in which the report as drafted may lead to misunderstanding.

1. In the third paragraph of the introduction, the next to last sentence states, "After the assessment, the team may recommend that seriously emotionally disturbed students be placed in residential care facilities."

It is important to emphasize that residential placement is a "last-ditch" alternative to be employed only after all other mental health or educational services, or combinations of the two, have been tried or considered.

In preference to out-of-home placement, for the great majority of pupils referred, the IEP team might recommend individual or group counseling, outpatient therapy, day treatment or some other service or combination. Only if neither the school nor mental health can provide services to enable the child to benefit from instruction may an out-of-home placement be made.

2. In Part II of the draft, under the heading, "Funding of Mental Health Services, " the second paragraph concludes

"...[County mental health] officials stated that they are using Short-Doyle funds to provide noneducational services to special education students. These funds can be used for other county mental health services including inpatient hospital, outpatient hospital, and clinical services."

This paragraph may lead the reader to conclude that diversion of Short-Doyle funds is not a problem. In fact, county Short-Doyle plans are designed to address the most pressing local mental health needs. After adoption by local boards of supervisors; the plans are submitted to the State Department of Mental Health for approval. These plans become the counties' blueprints for expenditure of Short-Doyle funds.

Although some of the pupils currently being referred by local education agencies are every bit as needful of mental health services as children and adults presently receiving Short-Doyle services, many others are much less so. Nonetheless, Chapter 1747/84 and Chapter 1274/85, mandate that all special education pupils in need of mental health services in order to benefit from instruction must receive them.

Thank you again for the opportunity to respond to the draft report.

Sincerely,


D. MICHAEL O'CONNOR, M.D.
Director

**HANDICAPPED AND DISABLED CHILDREN—SPECIAL
EDUCATION AND RELATED SERVICES—IN-
TERAGENCY RESPONSIBILITIES**

Assembly Bill No. 3632

CHAPTER 1747

An act to add Chapter 26 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code, and to amend Section 11401 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 30, 1984. Filed with
Secretary of State September 30, 1984.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3632, W. Brown. Disabled minors.

Existing law provides for various programs which provide social services, mental health services, and educational services to disabled children.

Existing law also provides that every child has a right to a free appropriate public education.

This bill would provide that it shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare to ensure maximum utilization of all state and federal resources available to provide handicapped children with a free appropriate public education, the provision of related services, as defined, and designated instruction and services, as defined.

The bill would provide that the State Department of Health Services or any designated local public health agency shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

The bill would provide that parents shall not be liable for the costs of therapy treatment services provided by the State Department of Health Services or the State Department of Mental Health, when provided to a child in the public schools, if the services are necessary for the child to benefit from special education,

The bill also provides that the Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program.

The bill provides that the State Department of Health Services shall be responsible for the provision of occupation and physical therapy, and that the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services, if

Ch. 1747 STATUTES OF 1984

these services are deemed necessary in a child's individualized educational program.

Existing law provides that the provision of special education programs and related services for children residing in state hospitals shall be the joint responsibility of the State Department of Developmental Services and the State Department of Mental Health.

This bill would also make the Superintendent of Public Instruction responsible for providing educational programs and related services to these persons.

The bill would provide that the State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools.

This bill would provide that prior to placing a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional Center, or public agency other than an educational agency, shall notify the administrator of the special education local plan area, where the residential facility is located, to determine if an appropriate educational program is available in the special education local plan area.

The bill would provide for meetings between a department or agency and the Superintendent of Public Instruction when a department or a designated local agency does not provide a related service or designated instruction to a child and the service is to be provided pursuant to the child's individualized education program.

The bill would also provide that, whenever a community care facility may be used for placement of a handicapped child, the State Department of Social Services shall, prior to licensing, or modifying a facility's license in order to permit expansion, consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

The bill would require local agencies to submit to the Department of Finance an estimate of any expenditure responsibilities which are, or will be, acquired by, or shifted from, the agency due to the foregoing provisions of the bill. The Department of Finance would be required to recommend in the "annual Budget Act any adjustments necessary to implement these changes in responsibility, for expenditures.

The bill would require each state agency referred to in the bill to develop, where necessary, regulations implementing the foregoing provisions of the bill. Each department would be required to obtain approval of its regulations from the Superintendent of Public Instruction prior to filing them with the Office of Administrative Law.

The bill would provide that its provisions would become operative on July 1, 1985.

Under existing law, a child may be eligible to receive assistance under the county-administered Aid to Families with Dependent

Children Foster Care (AFDC-FC) program if the child has been deprived of parental support or care, and if specified conditions are met.

This bill would create a state-mandated local program by providing that one of these conditions is that the individual must have been placed out of home pursuant to an individualized education program.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would create a state-mandated local program by imposing various requirements upon educational agencies.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

This bill would provide that, notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of the act would remain in effect unless and until they are amended or repealed by a later enacted act.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares that a number of state and federal programs make funds available for the provision of education and related services to children with handicaps who are of school age. The Legislature further finds and declares that California has not maximized, or sufficiently coordinated existing state programs, in providing supportive services which are necessary to assist a handicapped child to benefit from special education.

It is the intent of the Legislature that existing services rendered by state and local government agencies serving handicapped children be maximized and coordinated. It is the further intent of the Legislature that specific state and local interagency responsibilities be clarified by this act in order to better serve the educational needs of the state's handicapped children.

SEC. 2. Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 is added to the Government Code, to read:

**CHAPTER 26. INTERAGENCY RESPONSIBILITIES FOR PROVIDING
SERVICES TO HANDICAPPED CHILDREN**

7570. Ensuring maximum utilization of all state and federal resources available to provide handicapped children, as defined in

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s§ion-(1:) of Section 1401 of Title 20 of the United States Code, with a free appropriate public education, the provision of related services, as defined in subsection (17) of Section 1401 of Title 20 of the United States Code, and designated instruction and services, as defined in Section 56363 of the Education Code, to handicapped children; shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare. The Superintendent of Public Instruction shall ensure that this chapter is carried out through monitoring and supervision.

7571. The Secretary of Health and Welfare may designate a department of state government to assume the responsibilities described in Section 7570. The secretary, or his or her designee, shall also designate a single agency in each county to coordinate the service responsibilities described in Section 7572.

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified, to, make a determination of the child's need for the service before any action is taken with respect, to the provision of related services or designated instruction, and services to a child by individuals whose employment standards are not covered by the Education Code. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and, a, qualified person conducting, the assessment recommended the service in order for the child to benefit from special education. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section: 56329 of the Education Code, which shall be considered by the individualized education program team.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program; the local education agency, shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide

written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

'7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include:

- (1) A representative of the county mental health department.
- (2) A representative of the county welfare department.

(b) The expanded individualized education program team shall review the assessment and determine whether:

- (1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care will enable the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

- (1) Specification of a lead case manager from among the public agency representatives on the team.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

(3) Specific plans for reunification services pursuant to Section 16507.4 of the Welfare and Institutions Code to the parents, so that the child's return home may be appropriately planned for at the earliest time consistent with the child's best interests,

(d) The individualized education program process, with its procedural safeguards and access to appeal procedures, is deemed to meet requirements of an administrative review hearing as called for in Section 475 of the federal Social Security Act (42 U.S.C. Sec. 675), as amended by P.L. 96-272, for purposes of establishing eligibility for foster care maintenance payments,

(e) The superintendent shall enter into an agreement with the Director of the State Department of Social Services which permits

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the supervision of placement and care of a child placed out of home pursuant to an individualized education program to be done by the individualized education program team established above. The agreement shall specify how case supervision responsibilities shall be assigned to assure compliance with Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code, P.L. 96-272 and Part 30 (commencing with Section 56000) of Division 4 of the Education Code.

7573. The Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program. Local education agencies shall be responsible only for the provision of those services which are provided by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

7574. Notwithstanding any other provision of law, the State Department of Health Services, or any designated local public health agencies, shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

7575. (a) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of occupational therapy and physical therapy; as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral is within the scope of its statutory responsibilities. A private medical referral shall be based on a written report indicating the disability from a licensed physician and surgeon who has examined the pupil.

(c) When the California Children's Services panel physician disagrees with the private referral, the referral shall be treated by the individualized education program team as an educational recommendation only. The individualized education program team shall have the responsibility to determine if the services recommended are necessary for the pupil to benefit from special education. Upon this determination, and notwithstanding Section 7573, the provision of these services shall be the responsibility of the local educational agency.

(d) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(e) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(f) The department shall also be responsible for providing the services of an aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom the California Medical Assistance Program provides a life-maintaining medical service during the time in which the pupil would be in, s c h o o l

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any designated community mental health service, shall be responsible for the provision of psychotherapy or other mental health services when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

7577. (a) The State Department of Rehabilitation and the State Department of Education shall jointly develop assessment procedures for determining client eligibility for State Department of Rehabilitation services for handicapped pupils in secondary schools to help them make the transition from high school to work. The assessment procedures shall be distributed to local education agencies.

(b) The State Department of Rehabilitation shall maintain the current level of services to secondary school pupils in project work ability and shall seek ways to augment services with funds which may become available.

7578. The provision of special education programs and related services for handicapped children residing in state hospitals shall be ensured by the State Department of Developmental Services, the State Department of Mental Health and the Superintendent of Public Instruction in accordance with Chapter 8 (commencing with Section 56350) of Part 30 of Division 4 of Title 2 of the Education Code.

7579. (a) Prior to placing a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of the section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

7580. Prior to licensing a community care facility, as defined in Section 1502 of the Health and Safety Code, in which a handicapped child may be placed, or prior to a modification of such a facility's license to permit expansion of the facility, the State Department of Social Services shall consult with the administrator of the special education local plan area in order to consider the impact of licensure upon local education agencies.

7581. The residential and noneducational costs of a child placed in a medical or residential facility by a public agency, other than a local education agency, or independently-placed in a facility by the parent of the child, shall not be the responsibility of the state or local education agency, but shall be the responsibility of the placing agency or parent.

7582. Therapy treatment, services provided under programs of the State Department of Health Services or State Department of Mental Health, or their designated local agencies, rendered in the public schools, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered to any handicapped child when the services are necessary for the child to benefit from special education.

7583. Each local agency affected, by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1985, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shifts in expenditures caused by this chapter.

(c) Any reductions in state allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

7584. As used in this chapter, "handicapped children", "child," or "pupil" means individuals with exceptional needs as defined in Section 56026 of the Education Code.

7585. (a) Whenever any department or any local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to Section 7575 or 7576, and specified in the child's individualized education program, the parent, adult pupil, or any local education agency referred to in this chapter, shall submit a written notification of the failure to provide the service to the Superintendent of Public Instruction or the Secretary of Health and Welfare.

(b) When either the Superintendent of Public Instruction or the Secretary of Health and Welfare receives a written notification of the failure to provide a service as specified in subdivision (a), a copy shall immediately be transmitted to the other party. The superintendent, or his or her designee, and the secretary, or his or her designee, shall meet to resolve the issue within 15 calendar days of receipt of the notification: A written copy of the meeting resolution shall be mailed to the parent, the local education agency, and affected departments, within 10 days of the meeting.

(c) If the issue cannot be resolved within 15 calendar days to the satisfaction of the superintendent and the secretary, they shall jointly submit the issue in writing to the Director of the Office of Administrative Hearings, or his or her designee, in the State Department of General Services.

(d) The Director of the Office of Administrative Hearings, or his or her designee, shall review the issue and submit his or her findings in the case to the superintendent and the secretary within 30 calendar days of receipt of the case. The decision of the Director of the Office of Administrative Hearings, or his or her designee, shall be binding on the departments and their designated agencies who are parties to the dispute.

(e) If the meeting, conducted pursuant to subdivision (b), fails to resolve the issue to the satisfaction of the parent or local education agency, either party may appeal to the Director of the Office of Administrative Hearings, whose decision shall be the final administrative determination and binding on all parties.

(f) Whenever notification is filed pursuant to subdivision (a), the pupil affected by the dispute shall be provided with the appropriate related service or designated instruction and service pending resolution of the dispute, if the pupil had been receiving the service. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall ensure that funds are available for provision of the service pending resolution of the issue pursuant to subdivision (e).

(g) Nothing in this section prevents a parent or adult pupil from filing for a due process hearing under Section 7586.

(h) The Superintendent of Public Instruction and the Secretary of Health and Welfare shall submit to the Legislature on July 1 of each year a joint report on the written notifications received pursuant to subdivision (a) on the failure of departments or their designated local agencies to provide occupational therapy, physical therapy, or psychotherapy. This joint report shall include, but not be limited to, a description of the nature of these disputes, a summary of the

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outcomes of these disputes, and any recommendations for changes to the procedure set forth in subdivision (a) or with regard to any interagency agreement and regulations which might exist as a result of the implementation of this chapter.

(i) The contract between the State Department of Education and the Office of Administrative Hearings for conducting due process hearings shall include payment for services rendered by the Office of Administrative Hearings which are required by this section.

7586. (a) All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

(b) Upon receipt of a request for a due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies.

(c) All hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

(d) No public agency, state or local, may request a due process hearing pursuant to Section 56501 of the Education Code against another public agency.

7587. By July 1, 1985, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed and approved by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children.

7588. This chapter shall become operative on July 1, 1985, except Section 7583 which shall become operative on January 1, 1985.

SEC. 3. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care,

provides to such children all services as required by the department to children in foster care.

(b) The child has been deprived of parental support or care due to any of the reasons set out under Section 11250, provided:

(1) The child has been removed from the physical custody of his or her parent or guardian, and

(A) Has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300, or

(B) Has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602, or

(C) Has been detained under a court order pursuant to Section 320 or 636 which remains in effect; or

(D) Has been placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code.

(2) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11461.1 or in a demonstration county, pursuant to Section 16550, et seq.; or

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the provisions of the federal Indian Child Welfare Act. The provisions of Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with such act.

SEC. 4. As part of the March 15, 1985, report which is required to be submitted by local education agencies to the Superintendent of Public Instruction under Section 7583 of the Government Code, a school district or county office of education shall report all of the following:

(a) The estimated expenditures of state local assistance funds for special education and federal funds for special education for the 1984-85 fiscal-year used for the provision of occupational therapy, physical therapy, and psychotherapy.

(b) The number of handicapped pupils receiving occupational therapy, physical therapy, and psychotherapy at the time of the April pupil count.

(c) The name of the agency providing the occupational therapy, physical therapy, or psychotherapy, including the name of the agency paying for the service.

SEC. 5. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 6. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provision; of this act shall remain in effect unless and until they are amended or repealer? by a later enacted act.

MINORS—INDIVIDUALIZED EDUCATION PLANS, THERAPY, ASSESSMENTS, ETC.—SERIOUSLY EMOTIONALLY DISTURBED CHILDREN: 24-HOUR OUT-OF-HOME CARE

Assembly Bill No. 882

CHAPTER 1274

An act to amend Sections 7572, 7572.5, 7575, 7576, 7579, 7582, and 7587 of, to amend and repeal Section 7583 of, to add Sections 7586.5 and 7556.7 to, and to repeal Section 7574 of, the Government Code, to amend Sections 5651, 10950, and 11401 of, and to add Chapter 6 (commencing with Section 18350) to Part 6 of Division 9 of, the Welfare and Institutions Code, relating to minors, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1985. Filed with Secretary of State September 30, 1985.]

LEGISLATIVE COUNSEL-S DIGEST

AB 882, W. Brown. Minors.

Under existing provisions on interagency responsibilities for providing services to handicapped children, the State Department of Health Services and the State Department of Mental Health are required to adopt regulations in specified fields relating to their jurisdiction.

This bill would require these regulations to be developed in consultation with the State Department of Education.

This bill would also require a description of these services to be included in the county Short-Doyle plan.

The bill would also require that the recommendation of certain qualified professionals who conducted the assessment after specified reviews and discussions, be the recommendation of the local educational agency. This bill would be a state-mandated local program by requiring the local educational agency to ensure a qualified substitute is available if the responsible public agency representative is not available to participate in the individual education program meeting.

Existing law provides that the State Department of Health Services or any designated local public health agency shall be responsible for medical services which are provided by a licensed physician and surgeon to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

This bill would delete this provision.

This bill would require referrals for medical services for special education pupils to be based on detailed written reports. This bill

would be a state-mandated local program by requiring the local education agency to provide for certain medical referrals.

Existing law provides that parents shall not be liable for the costs of therapy treatment services provided by the State Department of Health Services or the State Department of Mental Health, when provided to a child in the public schools, if the services are necessary for the child to benefit from special education.

This bill would provide that parents shall not be liable for the costs of therapy treatment services as well as assessments, as specified, when rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program.

Existing law requires local agencies affected by various requirements relating to special education programs to estimate expenditures which will be shifted to or from other agencies because of specified laws and makes other related requirements.

This bill would repeal that provision on July 1, 1986.

Existing law requires specified state agencies to develop regulations relating to certain aspects of special education programs by July 1, 1986. This bill would change the date to January 1, 1986.

Under the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, aid is provided to a child who has been deprived of parental support, has been removed from the custody of a parent or guardian, and is under specified juvenile court orders or detention, or has been placed out of home pursuant to an individualized education program.

This bill would delete from these provisions of the AFDC-FC program, children placed out of home pursuant to an individualized education program and establish instead a separate program to pay for seriously emotionally disturbed children, who have been placed out of home pursuant to an individualized education program, as specified. This program would be funded from a separate appropriation in the budget of the State Department of Social Services. This bill would be a state-mandated local program by requiring payments to be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency.

This bill would also require the Superintendent of Public Instruction and the Secretary of Health and Welfare to jointly do the following: (1) prepare and implement within existing resources a plan for in-service training of specified state and local personnel and (2) submit a specified report to the Legislature and the Governor.

Under provisions on interagency responsibilities for providing services to handicapped children, local agencies are required to submit to the Department of Finance an estimate of any expenditure responsibilities which are, or will be, acquired by, or shifted from the agency. The Department of Finance is required to recommend in the annual Budget Act any adjustments necessary to implement these changes in responsibility for expenditures.

This bill would require state allocations in the 1986-87 fiscal year to be shifted only once the service has been included as a necessary part of the pupil's individualized education program and the service responsibility has been assumed by another local agency, as specified.

The bill would require the State Department of Social Services and the State Department of Education jointly to report to the Joint Legislative Budget Committee by January 1, 1988, regarding any growth in the number of severely emotionally disturbed children determined to need 24-hour out-of-home care as a result of specified legislation.

The California Constitution requires the state to reimburse local colleges and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be payable from the State Mandates Claims Fund.

This bill would appropriate \$1,600,000 from the General Fund to the State Department of Mental Health for the purposes of the act, as specified. It would require that expenditures made by a community mental health service designated by the State Department of Mental Health to provide prescribed services be financed on a basis of 100% during the period from March 1, 1986, to June 30, 1987.

This bill would take effect immediately as an urgency statute. Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7572 of the Government Code is amended to read:

7572. (a) A child shall be assessed in all areas related to the suspected handicap by those qualified to make a determination of the child's need for the service before any action is taken with respect to the provision of related services or designated instruction and services to a child, including, but not limited to, services in the areas of: occupational therapy, physical therapy, psychotherapy, and other mental health assessments. All assessments required or conducted pursuant to this section shall be governed by the assessment procedures contained in Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code.

(b) Occupational therapy and physical therapy assessments shall be conducted by qualified medical personnel as specified in regulations developed by the State Department of Health Services in consultation with the State Department of Education.

(c) Psychotherapy and other mental health assessments shall be conducted by qualified mental health professionals as specified in regulations developed by the State Department of Mental Health, in consultation with the State Department of Education, pursuant to this chapter.

(d) A related service or designated instruction and service shall only be added to the child's individualized education program by the individualized education program team, as described in Part 30 (commencing with Section 56000) of the Education Code, if a formal assessment has been conducted pursuant to this section, and a qualified person conducting the assessment recommended the service in order for the child to benefit from special education. In no case shall the inclusion of necessary related services in a pupil's individualized education plan be contingent upon identifying the funding source. Nothing in this section shall prevent a parent from obtaining an independent assessment in accordance with subdivision (b) of Section 56329 of the Education Code, which shall be considered by the individualized education program team.

(1) Whenever an assessment has been conducted pursuant to subdivision (b) or (c), the recommendation of the person who conducted the assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. When the proposed recommendation of the person has been discussed with the parent and there is disagreement on the recommendation pertaining to the related service, the parent shall be notified in writing and may require the person who conducted the assessment to attend the individualized education program team meeting to discuss the recommendation. The person who conducted the assessment shall attend the individualized education program team meeting if requested. Following this discussion and review, the recommendation of the person who conducted the assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local educational agency.

(2) If an independent assessment for the provision of related service or designated instruction and services is submitted to the individualized education program team, review of that assessment shall be conducted by the person specified in subdivisions (b) and (c). The recommendation of the person who reviewed the independent assessment shall be reviewed and discussed with the parent and with appropriate members of the individualized education program team prior to the meeting of the individualized education program team. The parent shall be notified in writing and may request the person who reviewed the independent assessment to attend the individualized education program team meeting to discuss the recommendation. The person who reviewed the independent assessment shall attend the individualized education program team meeting if requested. Following this review and discussion, the recommendation of the person who reviewed the

independent assessment shall be the recommendation of the individualized education program team members who are attending on behalf of the local agency.

(3) Any disputes between the parent and team members representing the public agencies regarding a recommendation made in accordance with paragraphs (1) and (2) shall be resolved pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code.

(e) Whenever a related service or designated instruction and service specified in subdivision (b) or (c) is to be considered for inclusion in the child's individualized education program, the local education agency shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the individualized education program. If the responsible public agency representative cannot meet with the individualized education program team, then the representative shall provide written information concerning the need for the service pursuant to subdivision (d) of this section. Conference calls, together with written recommendations, are acceptable forms of participation. If the responsible public agency representative will not be available to participate in the individualized education program meeting, the local educational agency shall ensure that a qualified substitute is available to explain and interpret the evaluation pursuant to subdivision (d) of Section 56341 of the Education Code. A copy of the information shall be provided by the responsible public agency to the parents or any adult pupil for whom no guardian or conservator has been appointed.

SEC 2 Section 7572-S of the Government Code is amended to read:

7572.5. (a) When an assessment is conducted pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of Division 4 of the Education Code, which determines that a child is seriously emotionally disturbed, as defined in Section 300.5 of Title 34 of the Code of Federal Regulations, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include representative of the county mental health department.

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(b) The expanded individualized education program team shall review the assessment and determine whether:

(1) The child's needs can reasonably be met through any combination of nonresidential services, preventing the need for out-of-home care.

(2) Residential care is necessary for the child to benefit from educational services.

(3) Residential services are available which address the needs identified in the assessment and which will ameliorate the conditions leading to the seriously emotionally disturbed designation.

(c) If the review required in subdivision (b) results in an individualized education program which calls for residential placement, the individualized education program shall include all the items outlined in Section 56345 of the Education Code, and shall also include:

(I) Designation of the county mental health department as lead case manager. Lead case management responsibility may be delegated to the county welfare department by agreement between the county welfare department and the designated mental health department. The mental health department shall retain financial responsibility for provision of case management services.

(2) Provision for a review of the case progress, the continuing need for out-of-home placement, the extent of compliance with the individualized education program, and progress toward alleviating the need for out-of-home care, by the full individualized education program team at least every six months.

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(3) Identification of an appropriate residential facility for placement with the assistance of the county welfare department as necessary.

SEC. 3. Section 7574 of the Government Code is repealed.

SEC. 4. Section 7575 of the Government Code is amended to read:

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Section 250 et seq. of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, which the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

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(1) The diagnosed neuromuscular, musculoskeletal, or physical handicapping condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

Symbol ▽ indicates text deletion

(4) The relationship of the medical disability to the pupil ; need for special education and related services.

(5) Relevant medical records.

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

SEC. 5. Section 7576 of the Government Code is amended to read:

7576. Notwithstanding any other provision of law, the State Department of Mental Health, or any community mental health service designated by the State Department of Mental Health, shall be responsible for the provision of psychotherapy or other mental health services, as defined by regulation by the State Department of Mental Health, developed in consultation with the State Department of Education, when required in the child's individualized education program. This service shall be provided directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic, nonsectarian school or agency.

SEC. 6. Section 7579 of the Government Code is amended to read:

7579. (a) Prior to placing a handicapped child or a child suspected of being handicapped in a residential facility, outside the child's home, a court, regional center for the developmentally disabled, or public agency other than an educational agency, shall notify the administrator of the special education local plan area in which the residential facility is located. The administrator of the special education local plan area shall provide the court or other placing agency with information about the availability of an appropriate public or nonpublic, nonsectarian special education program in the special education local plan area where the residential facility is located.

(b) Notwithstanding Section 56159 of the Education Code, the involvement of the administrator of the special education local plan area in the placement discussion, pursuant to subdivision (a), shall in no way obligate a public education agency to pay for the

residential costs and the cost of noneducational services for a child placed in a licensed children's institution or foster family home.

(c) It is the intent of the Legislature that this section will encourage communication between the courts and other public agencies which engage in referring children to, or placing children in, residential facilities, and representatives of local education agencies. It is not the intent of the section to hinder the courts or public agencies in their responsibilities for placing handicapped children in residential facilities when appropriate.

SEC. 7. Section 7582 of the Government Code is amended to read:

7582. Assessments and therapy treatment services provided under programs of the State Department of Health Services or the State Department of Mental Health, or their designated local agencies, rendered to a child referred by a local education agency for an assessment or a handicapped child with an individualized education program, shall be exempt from financial eligibility standards and family repayment requirements for these services when rendered pursuant to this chapter.

SEC. 8. Section 7583 of the Government Code is amended to read:

7583. Each local agency affected by this chapter shall estimate expenditures which were previously borne by the agency which will, as a result of enactment of this chapter, shift to another agency, or shall identify and estimate its responsibility for expenditures which will be acquired by the agency as a result of enactment of this chapter. The agency shall report the estimated shifts in responsibility in costs through appropriate state agencies by March 15, 1985, and report actual shifts in expenditures annually by March 15 in subsequent years. The appropriate state agencies shall submit this information to the Department of Finance annually by April 30.

(b) The Department of Finance shall, in the annual Budget Act, recommend appropriate adjustments, if any, in allocations and entitlements to local agencies to reflect any shift in expenditures caused by this chapter.

(c) Any reductions in state allocations for local educational agencies resulting from this chapter shall be applied equally on a pro rata basis by the Superintendent of Public Instruction.

(d) By January 15, 1985, the superintendent and the Secretary of Health and Welfare shall jointly develop uniform data collection forms to be used by local agencies in reporting under this section.

(e) This section shall remain in effect only until July 1, 1986, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 1986, deletes or extends this date.

SEC. 9. Section 7586.5 is added to the Government Code, to read:

7586.5. Not later than January 1, 1988, the Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly submit to the Legislature and the Governor a report on the implementation of this chapter. The report shall include, but not be limited to, information regarding the number of complaints and due process hearings resulting from this chapter.

SEC. 10. Section 7586.7 is added to the Government Code, to read:

7586.7. The Superintendent of Public Instruction and the Secretary of Health and Welfare shall jointly prepare and implement within existing resources a plan for in-service training of state and local personnel responsible for implementing the provisions of this chapter.

SEC. 11. Section 7587 of the Government Code is amended to read:

7587. By January 1, 1986, each state department named in this chapter shall develop regulations, as necessary, for the department or designated local agency to implement this act. All regulations shall be reviewed by the Superintendent of Public Instruction prior to filing with the Office of Administrative Law, in order to ensure consistency with federal and state laws and regulations governing the education of handicapped children. The directors of each department shall adopt all regulations pursuant to this section as emergency regulations in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purpose of the Administrative Procedure Act, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety or general welfare. These regulations shall not be subject to the review and approval of the Office of Administrative Law shall not be subject to automatic repeal until 180 days after the regulations take effect; and shall become effective immediately upon filing with the Secretary of State. Regulations adopted pursuant to this section shall be developed with the maximum feasible opportunity for public participation and comments.

SEC. 12. Section 5651 of the Welfare and Institutions Code is amended to read:

5651. The annual Short-Doyle plan for each county shall include all of the following:

(a) A detailed presentation of all expected expenditures of county, state, and federal government funds and all anticipated public and private revenues.

(b) A programmatic description of each of the services provided for in subdivision (a) including all of the following:

(1) Program type using definitions prescribed in the "cost allocation and planning model where applicable.

(2) The number of staff in full-time equivalents if this information is applicable to the service type.

(3) An estimate of the unduplicated number of clients served and the number of units of service to be provided.

(4) The priority populations to be served.

(5) The number of beds if this information is applicable to the service type.

(6) A detailed description of the program if the service is one newly added in the year for which the annual Short-Doyle plan is submitted or newly added in the prior year.

(7) A detailed description of the service if the number of units of services or the cost per unit of service has changed more than 25 percent from the annual Short-Doyle plan submitted for the previous year.

(8) A detailed description of renovation or remodeling costs, if any.

(c) Additional information as may be necessary to meet local planning needs as determined by the county.

(d) A summary presentation of all expected expenditures of county, state, and federal government funds and all anticipated public and private revenues.

(e) Assurances that the county is in compliance with the following requirements:

(1) The Local Mental Health Advisory Board has reviewed and approved procedures insuring citizen and professional involvement leading to the formulation and adoption of the annual Short-Doyle plan.

(2) A quality assurance plan approved by the department is in force.

(3) Certification review hearing procedures approved by the department are in force.

(4) A plan for providing case management services approved by the department is in force.

(f) Other information determined to be necessary by the director.

(g) A description of the services required by Sections 7571 and 7576 of the Government Code, including the cost of those services.

Any county that wishes to modify its plan shall obtain prior approval by the department in accordance with procedures established by the director.

SEC. 13. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of public social services, if his application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a fair hearing.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

Ch. 1274

STATUTES OF 1985

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct fair hearings in order to secure approval of a state plan under the provisions of applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of fair hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6.

SEC. 14, Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department; if responsible for placement and care, provides to such children all services as required by the department to children in foster care.

(b) The child has been deprived of parental support or care due to any of the reasons set out under Section 11250, provided:

(1) The child has been removed from the physical custody of his or her parent or guardian as a result of a judicial determination that continuance in the home would be contrary to the child's welfare, and that, if the child was placed in foster care, reasonable efforts were made, and will continue to be made, to prevent or eliminate the need for removal of the child from his or her home, and to make it possible for the child to return to his or her home, and any of the following apply:

(A) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 3007.

(B) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(C) The child has been detained under a court order pursuant to Section 319 or 636 which remains in effect.

▽▽▽

(2) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1 or in a demonstration county, pursuant to Section 16550, et seq.

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not

be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

SEC. 15. Chap & 6 (commencing with Section 18350) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

**CHAPTER 6. SERIOUSLY EMOTIONALLY DISTURBED CHILDREN:
24-HOUR OUT-OF-HOME CARE**

18350. (a) Payments for 24-hour out-of-home care shall be provided under this chapter on behalf of any seriously emotionally disturbed child who has been placed out-of-home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. These payments shall not constitute an aid payment or aid program.

(b) Payments shall only be made to children placed in privately operated residential facilities licensed in accordance with the Community Care Facilities Act.

(c) Payments shall be based on rates established in accordance with Sections 11461, 11462, and 11463 and shall be based on providers' actual allowable costs.

(d) Payments for 24-hour out-of-home care under this section shall not result in any cost to the seriously emotionally disturbed child or his or her parent or parents.

18391. (a) Payments shall be issued by the county welfare department to residential care providers upon receipt of authorization documents from the State Department of Mental Health or a designated county mental health agency. The county welfare department located in the same county as the county mental health agency designated to provide case management services shall be responsible for payment under this section. Authorization documents shall be submitted directly to the county welfare department clerical unit responsible for issuance of warrants and shall include information sufficient to demonstrate that the child meets all eligibility criteria established in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education.

(b) The county welfare department shall submit reports to the State Department of Social Services for reimbursement of payments issued to seriously emotionally disturbed children for 24-hour out-of-home care.

18352. County welfare departments may, at their option and with approval of the State Department of Social Services and other appropriate agencies, enter into agreements with other local agencies for the delivery of a single payment for all related services for a seriously emotionally disturbed child to a residential care Provider.

18353. When an individualized education program calls for 24-hour out-of-home care, the county welfare department shall provide assistance, as necessary, in identifying a facility suited to the child's needs and in placing the child in the facility.

Symbol ▽ indicates text deletion

18354. (a) If a provider of 24-hour out-of-home care to a child who has been placed pursuant to Section 7572.5 of the Government Code in a 24-hour out-of-home placement disputes an action of the designated county mental health agency regarding the providers eligibility for payment, the provider may request a review of the issue by the designated county mental health agency. Designated county mental health agencies may establish policies and procedures, as may be necessary, to implement this subdivision.

(b) If the issue remains unresolved after the review by the designated county mental health agency, then the provider may request a review of the issue by the State Department of Mental Health. The Director of Mental Health may establish policies and procedures, as may be necessary, to implement this subdivision. The review under this subdivision shall be limited to the issue of whether the eligibility for payment criteria established by the State Department of Mental Health was correctly applied.

18355. Notwithstanding any other provision of the law, 24-hour out-of-home care for seriously emotionally disturbed children who are placed in accordance with Section 7572.5 of the Government Code shall be funded from a separate appropriation in the budget of the State Department of Social Services in order to fund both 24-hour out-of-home care payment and local administrative costs. Reimbursement for 24-hour out-of-home care payment costs shall be from that appropriation, subject to the same sharing ratio as prescribed in subdivision (c) of Section 15200, and available funds. Reimbursements for local administrative costs shall also be from that appropriation, subject to the same sharing ratio as prescribed in Section 15204.2 for the Aid to Families with Dependent Children program, and available funds.

SEC. 15.5. (a) The Legislature recognizes that current estimates of the number of severely emotionally disturbed children in the state who need 24-hour out-of-home care may be less than the number of children in need of such care as determined appropriate through the Individual Education Plan (IEP) process established under Chapter 1747, of the Statutes of 1984.

(b) Therefore, the State Department of Social Services and the State Department of Education shall jointly report to the Joint Legislative Budget Committee by January 1, 1988, regarding any growth in the number of severely emotionally disturbed children determined to need 24-hour out-of-home care as a result of Chapter 1747 of the Statutes of 1964. This report shall include documentation of the cost impacts on the state, county, and federal governments for the cost of 24-hour out-of-home care for these children.

SEC. 16. Funds not to exceed the total amount reported by the State Department of Education, as verified by the Department of Finance pursuant to Section 7583 of the Government Code and Section 4 of Chapter 1747 of the Statutes of 1984, shall be transferred July 1, 1966, from the State Department of Education to the state departments responsible for services specified in Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the

Government Code and designated in each pupil's individualized education program.

SEC. 17. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars (\$500,000), shall be made from the State Mandates Claims Fund.

SEC. 18. The sum of one million six hundred thousand dollars (\$1,600,000) is hereby appropriated from the General Fund to the State Department of Mental Health for purposes of conducting assessments and participating in developing individualized education programs as required by Chapter 26 (commencing with Section 7370) of Division 7 of Title 1 of the Government Code, during the period of March 1, 1986 through June 30, 1986. Notwithstanding Section 5705 of the Welfare and Institutions Code, expenditures made by a community mental health service designated by the State Department of Mental Health to provide the services described in this section shall be financed on a basis of 100 percent state funds during the period from March 1, 1986, to June 30, 1986, inclusive.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for regulations to be developed in time for the orderly transfers of service and funding responsibility required by Chapter 1747 of the Statutes of 1984, it is necessary that this bill take effect immediately.

MULTIFAMILY RENTAL HOUSING-BONDS AND SECURITIES-CONSTRUCTION AND MORTGAGE LOANS

Assembly Bill No. 2002

CHAPTER 1275

An act to amend Sections 51005, 51335, and 52080 of the Health and Safety Code, relating to housing.

[Approved by Governor September 30, 1985. Filed with
Secretary of State September 30, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2002, M. Waters. Multifamily rental housing.
(1) Existing law requires the California Housing Finance Agency, within 90 days following the close of each fiscal year, to submit an

TITLE 2

**JOINT REGULATIONS FOR
HANDICAPPED CHILDREN**

(p. 2051)

(Register 26, No. 25—7-12-66)

DIVISION 9. JOINT REGULATIONS FOR HANDICAPPED CHILDREN

**CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING
SERVICES TO HANDICAPPED CHILDREN**

DETAILED ANALYSIS

**CHAPTER 1. INTERAGENCY RESPONSIBILITIES FOR PROVIDING
SERVICES TO HANDICAPPED CHILDREN**

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EXHIBIT "C"

§ 60000
(p. 2052)

JOINT REGULATIONS FOR
HANDICAPPED CHILDREN

TITLE 2

(Register 86, No. 25—7-12-86)

Article 1. General Provisions

60000. Scope.

The provisions of this chapter shall implement Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code relating to interagency responsibilities for providing services to handicapped children. This chapter applies to the State Departments of Education, Mental Health, Health Services, Social Services, and their designated local agencies.

The intent of this chapter is to assure conformity with Public Law 94-142: The Education for All Handicapped Children Act of 1975, (20 U.S.C. § 1401 et seq.) and Section 504 of Public Law 93-112: The Rehabilitation Act of 1973, (29 U.S.C. § 794), and their implementing regulations including Sections 76.1 et seq., 104.1 et seq., and 300.1 et seq. of Title 34 of the Code of Federal Regulations. Thus, provisions of this chapter shall be construed as supplemental to, and in the context of, federal and state laws and regulations relating to individuals with exceptional needs.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7570, Government Code.

HISTORY:

1. New Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) filed 12-31-85 as an emergency; designated effective 1-1-86 (Register 86, No. 1). A Certificate of Compliance must be transmitted to OAL within 180 days or emergency language will be rep'd on 6-30-86.

2. Division 9 (Chapter 1, Articles 1-9, Sections 60000-60610, not consecutive) refiled 6-30-86 as an emergency; effective upon filing (Register 86, No. 28). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 10-28-86.

3. Editorial correction of HISTORY NOTE No. 1 (Register 86, No. 28).

60010. General Definitions.

(a) Words shall have their usual meaning unless the context or a definition clearly indicates a different meaning. Words used in their present tense include the future tense; words in the singular form include the plural form; and use of the masculine gender includes the feminine gender. Use of the word "shall" denotes mandatory conduct; "may" denotes permissive conduct.

(b) "Confidentiality" means the protection of spoken and written communications, including clinical and educational records governed by the provisions of Section 99.3 of Title 46 of the Code of Federal Regulations, Section 300.500 of Title 34 of the Code of Federal Regulations, Sections 827, 4514, 5328, and 10850 of the Welfare and Institutions Code, and Section 2890 of Title 17 of the California Administrative Code.

(c) "County superintendent of schools" means either an appointed or elected official who, within the county's jurisdiction, supervises and ensures adherence to education laws as defined in the California State Constitution, Education Code, and Title 5 of the California Administrative Code.

(d) "Designated instruction and service" and "related services" means a component of program options as described in Sections 56361 (b) and 56363 (b) of the Education Code, Section 1401 (17) of Title 20 of the United States Code, and Section 300.13 of Title 34 of the Code of Federal Regulations.

(e) "Individualized education program team" means a team which is constituted in accordance with Section 56341 of the Education Code, and Section 300.344 of Title 34 of the Code of Federal Regulations.

(f) "Expanded individualized education program team" means a team which is constituted in accordance with Section 56341 of the Education Code and pursuant to Section 7572.5 of the Government Code includes a representative of the county mental health department.

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(p. 2053)

(Register 66, No. 1-14-66)

(g) "Individual with exceptional needs" means those individuals who meet the requirements of Section 56026 of the Education Code and Sections 3030 and 3031 of Title 5 of the California Administrative Code.

(h) "Interagency agreement" means a negotiated written document which defines each agency's role and responsibilities for serving individuals with exceptional needs and assist in promoting coordination of these services.

(i) "Parent" means those persons described in Section 56028 of the Education Code.

(j) "Special education" means specially designed instruction as described in Section 56031 of the Education Code and Section 300.14 of Title 34 of the Code of Federal Regulations.

(k) "Responsible local education agency" means the school district or county office specified in Section 56030 of the Education Code.

(l) "Special education services region" means the school district organized in accordance with Section 56032 of the Education Code.

(m) "Special education local plan area" means the service area covered by the local plan developed in accordance with Section 56170 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7570, Government Code; Section 5328, Welfare and Institutions Code; Section 2890, Title 17, California Administrative Code; Section 300.500, Title 34, Code of Federal Regulations; and Section 99.3, Title 45, Code of Federal Regulations.

Article 2. Mental Health and Related Services

60020. Mental Health Definitions.

(a) "Psychotherapy and other mental health services" means those services defined in Sections 542 to 543, inclusive, of Title 9 of the California Administrative Code, and provided by a local mental health program directly or by contract.

(b) "Mental health assessments" means assessment, as described in Section 543, subdivision (b) of Title 9 of the California Administrative Code, conducted by mental health professionals and conducted in accordance with Section 56320 of the Education Code by a person employed or designated by a local mental health program.

(c) "Mental health professionals" means psychiatrists, psychologists, clinical social workers, and marriage, family and child counselors meeting the appropriate criteria specified in Sections 5600.2 and 5650 of the Welfare and Institutions Code, and Article 8 of subchapter 3 of Title 9 of the California Administrative Code.

(d) "Local mental health program" means a county community mental health program established in accordance with the Short-Doyle Act (Part 2 commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or the county welfare agency when designated pursuant to Section 7572.5 of the Government Code.

(e) "Local Mental Health Director" means the officer appointed by the county governing body to manage a local mental health program.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56320, Education Code; and Sections 542 and 643, Title 9, California Administrative Code.

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(p. 2054)

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(Register at. No. 1-14-86)

60030. Local Interagency Agreement.

(a) In order to facilitate the provision of services required by subdivisions (a), (b), (c), (d), and (e) of Section 7572 and Section 7572.5 of the Government Code:

(1) The Local Mental Health Director shall appoint liaison person(s) for the local mental health program. The County Superintendent of Schools shall ensure the appointment of liaison person(s) for the special education local plan areas by the superintendent or designee of the responsible local education agency of the special education local plan area.

(2) The Local Mental Health Director and the County Superintendent of Schools shall ensure, prior to July 1, 1986, that an interagency agreement is developed. Every three years thereafter the interagency agreement shall be renewed, and revised, if necessary. This provision does not preclude the parties from revising the interagency agreement at any time they determine a revision is necessary.

(b) The interagency agreement shall include, but not be limited to, a delineation of the process and procedure for:

(1) Interagency referrals of pupils which minimize time line delays. This may include written parental consent on the receiving agency's forms.

(2) Timely exchange of pupil information in accordance with applicable procedures ensuring confidentiality.

(3) Participation of mental health professionals, including those contracted to provide services, at individualized education program team meetings pursuant to subdivisions (d) and (e) of Section 7672 and Section 7576 of the Government Code.

(4) Developing or amending the mental health related service goals and objectives, and the frequency and duration of such services indicated on the pupil's individualized education program.

(5) Transportation of individuals with exceptional needs to and from the mental health service site when such service is not provided at the school.

(6) Provision by the school of an assigned, appropriate space for delivery of mental health services or a combination of education and mental health services to be provided at the school.

(7) Continuation of mental health services during periods of school vacation when required by the individualized education program.

(8) Identification of existing public and state-certified nonpublic educational programs, treatment modalities, and location of appropriate residential placements which may be used for placement by the expanded individualized education program team.

(9) Out-of-home placement of seriously emotionally disturbed pupils in accordance with the educational and treatment goals on the individualized education program.

NOTE: Authority cited: Section 7567, Government Code. Reference: Section 5608, Welfare and Institutions Code; and Section 56140, Education Code.

60040. Referral and Assessment.

(a) A responsible local education agency preparing an initial assessment plan in accordance with Section 56320 et. seq. of the Education Code may, with written parental consent, refer the pupil suspected of being an individual with exceptional needs to the local mental health program to determine the need for mental health services when:

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(Register 88, No. 1-14-86)

(1) The pupil meets the requirements of (b) (4) of this section; and,
(2) The provision of psychological and counseling services described in Sections 3051.9, 3051.10, and 3051.11 of Title 5 of the California Administrative Code is not appropriate to meet the pupil's needs.

(b) Prior to referring an individual with exceptional needs to a local mental health program to determine the need for mental health services, the responsible local education agency shall ensure that:

(1) Written parental consent has been obtained;

(2) An assessment has been made by school site personnel in accordance with Sections 56001(j), 56324, and 56320(b) (3) of the Education Code;

(3) Counseling and guidance described in Sections 3051.9, 3951.10, and 3051.11 of Title 5 of the California Administrative Code has been provided to the pupil and the individualized education program team has determined that such counseling is not meeting the pupil's needs;

(4) A review of all assessment data, including observations of the pupil in a variety of educational and natural settings, documents that:

(A) The behavioral characteristics of the pupil adversely affect the pupil's educational performance as measured by: standardized achievement tests reported in scores and compared to measured ability when appropriate; teacher observations; work samples; and grade reports reflecting classroom functioning; or, other measures determined to be appropriate by the individualized education program team.

(B) The behavioral characteristics of the pupil cannot be defined solely as a behavior disorder or a temporary adjustment problem, or cannot be resolved with short-term counseling.

(C) The age of onset was from 30 months to 21 years and has been observed for at least 6 months.

(D) The behavioral characteristics of the pupil are present in several settings, including the school, the community, and the home.

(E) The adverse behavioral characteristics of the pupil are severe as indicated by their rate of occurrence and intensity.

(c) When referring a pupil suspected of being an individual with exceptional needs or an identified individual with exceptional needs to the local mental health program, the responsible local education agency shall:

(1) Obtain written parental consent to forward educational information to the local mental health program. Educational information shall include:

(A) A copy of the assessment reports completed in accordance with Section, 56327 of the Education Code.

(B) Current, relevant behavior observations of the pupil in a variety of educational and natural settings.

(C) A report prepared by personnel who provided "specialized" counseling and guidance services to the individual with exceptional needs as described in Sections 3051.9, 3051.10, and 3051.11 of Title 5 of the California Administrative Code and, when appropriate, an explanation why such counseling and guidance will not meet the needs of the pupil suspected of being an individual with exceptional needs.

(2) Obtain written parental consent to allow the mental health professional to observe the pupil during school.

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(Register 88, No. 1-14-88)

(3) Propose a date for the individualized education program team meeting.
(d) The local mental health program shall be responsible for reviewing the educational information, observing, if necessary, the pupil in the school environment, and determining if mental health assessments are needed.

(1) If mental health assessments are deemed necessary by a mental health professional, a mental health assessment plan shall be developed and the parent's written informed consent obtained pursuant to Section 300.500 of Title 34 of Code of the Federal Regulations and Section 7572 of the Government Code.

(2) When the mental health assessments cannot be completed within the required time limit specified in Section 56344 of the Education Code, the local mental health professional or designee shall, no later than 15 days prior to the scheduled meeting, notify the individualized education program team administrator or designee.

(3) The individualized education program team administrator or designee shall contact the parent to obtain permission for an extension, not to exceed 15 days, of the individualized education program team meeting to allow the mental health assessments to be completed.

(e) The local mental health program shall provide to the individualized education program team a written assessment report in accordance with Section 56327 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56363, Education Code; and Sections 3051.9, 3051.10 and 3051.11, Title 5, California Administrative Code.

60050. Individualized Education Program.

(a) When mental health services are to be provided, the following written information shall be included in the individualized education program:

(1) A description of the mental health services to be provided;
(2) The goals and objectives of the mental health services, with appropriate objective criteria and evaluation procedures to determine whether objectives are being achieved; and,

(3) Initiation, frequency, and duration of the mental health services to be provided to the pupil.

(b) Parental approval for the provision of mental health treatment services shall be supported by a signed consent for treatment.

NOTES: Authority cited: Section 7587, Government Code. Reference: Section 300.346, Title 34, Code of the Federal Regulations; and Section 56345, Education Code.

Article 3. 24-Hour Out-of-Home Care

60100. Placement of Seriously Emotionally Disturbed Pupils.

(a) The local mental health program and the special education local plan area liaison person(s) shall define the process and procedures for coordinating local services to promote alternatives to out-of-home care.

(b) If the individualized education program team has determined that local educational program options cannot implement the pupil's individualized education program and is considering a recommendation of residential placement for a pupil who meets the eligibility criteria specified in Section 3030(i) of Title 5 of the California Administrative Code, the team meeting shall continue if a representative of the local mental health program is present.

TITLE 2**JOINT REGULATIONS FOR
HANDICAPPED CHILDREN**§ 60100
(p. 2057)

(Register 22, No. 1—1-4-66)

(1) If a representative from the local mental health program is not present, the individualized education program team meeting shall be adjourned and reconvened within 15 calendar days with mental health participation.

(2) If the pupil is a dependent at ward of the court, the agency vested with care, custody, and control of the pupil shall be notified of the individualized education program meeting and shall function as a pupil's legally responsible agent for purposes of participating in the individualized education program team process.

(c) If the local mental health program determines that additional mental health assessments are needed, the mental health representative shall proceed in accordance with Section 60040.

(d) The expanded individualized education program team shall consider all possible alternatives to out-of-home placement. Such alternatives may include pay combination of cooperatively developed education and mental health service options, as described in Sections 56361 and 56365 of the Education Code and mental health services, as described in Sections 542 and 543 of Title 9 of the California Administrative Code.

(e) When residential placement is the final decision of the expanded individualized education program team, the team shall develop a written statement documenting the pupil's educational and mental health treatment needs that support the recommendation for this placement.

(f) The expanded individualized education program team shall identify one or more appropriate, least restrictive and least costly residential placement alternatives. The facility must have a rate set in accordance with Section 60200 (d) and shall be:

(1) Located within or adjacent to the county of residence of the pupil's parents or other legally responsible agent pursuant to Section 300.552(a) (3) of Title 34 of the Code of Federal Regulations, except when documentation is provided that no nearby placement alternative is able to implement the individualized education program; and

(2) A privately operated residential facility licensed by the Department of Social Services with an appropriate off-grounds public school program available to pupils; or

(3) A privately operated residential facility licensed by the Department of Social Services with an appropriate on-grounds public school program available to pupils; or

(4) A privately operated residential facility licensed by the Department of Social Services wherein a Education nonsectarian school program is certified by the State Department of and available to pupils.

(g) The mental health program representative to the expanded individualized education program team shall be responsible for notifying the Local Mental Health Director or designee of the team's decision within one working day of the individualized education program team meeting.

NOTE: Authority cite & Section 7587, Government Code. Reference: Section 60040, Title 5, California Administrative Code; and Section 300.305, Title 34, Code of Federal Regulations.

§66110
(p. 2058)

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(Register 44, No. 1-1-4-44)

60110. Case Management.

(a) The Local Mental Health Director or designee shall designate a lead case manager to finalize the pupil placement plan with the approval of the parent and the individualized education program team within 15 days from the decision to place the pupil in a residential facility. Actual placement must be accomplished as soon as possible.

(b) Pupils who have been adjudicated as dependents or wards of the court shall receive case management for required child welfare services and Aid to Families with Dependent Children-Foster Care services from the agency vested with the care, custody, and control of the pupil.

(c) Case management is defined pursuant to subdivision (a) of Section 546 of Title 9 of the California Administrative Code and shall include the following responsibilities:

(1) Convening parent(s) and representatives of public and private agencies in accordance with subsection (f) of Section 60100 in order to identify the appropriate residential placement.

(2) Verifying with the educational administrator or designee the approval of the local governing board of the district, special education service region, or county office pursuant to Section 56342 of the Education Code.

(3) Completing the local mental health program payment authorization in order to initiate out-of-home care payments.

(4) Coordinating the completion of the necessary County Welfare Department, local mental health program, and responsible local education agency financial paperwork or contracts.

(5) Coordinating the completion of the residential placement as soon as possible.

(6) Developing the plan for and assisting the family and pupil in the pupil's social and emotional transition from home to the residential facility and the subsequent return to the home.

(7) Facilitating the enrollment of the pupil in the residential facility.

(8) Conducting quarterly face-to-face contacts with the pupil at the residential facility to monitor the level of care and supervision and the implementation of the treatment services and the individualized education program.

(9) Notifying the parent or legal guardian and the local education agency administrator or designee when there is a discrepancy in the level of care, supervision, provision of treatment services, and the requirements of the individualized education program.

(10) Coordinating the six-month expanded individualized education team meeting with the local education agency administrator or designee.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 3061, Title 8, California Administrative Code; and Section 548(A), Title 9, California Administrative Code.

Article 4. Financial Provision for 24-Hour Out-of-Home Placement

60200. Financial Responsibilities.

(a) The purpose of this article is to establish conditions and limitations for reimbursement for the provision of related services and 24-hour out-of-home placement described in Articles 2 and 3. These services and placements are to be provided at no cost to the parent.

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HANDICAPPED CHILDREN

§ 60300
(p. 2059)

(Register 84, Ho. 1-4-85)

b) The local mental health program shall be financially responsible for:
(1) Provision of mental health services as recommended by a local mental health program representative and included in an individualized education program. Services shall be provided either directly or by contract. Contract services shall be delivered in accordance with Section 523 of Title 9 of the California Administrative Code. These services must be provided within the State of California.

(2) Reimbursement to the provider for these mental health services shall be a negotiated net amount or rate approved by the Director of Mental Health as provided in Section 5705.2 of the Welfare and Institutions Code, or the providers' actual reasonable cost.

(c) The local education agency shall be fiscally responsible for:

(1) Transportation provided during school hours to and from a mental health treatment center as specified in the pupil's individualized education program and in accordance with Section 300.13(b)(13) of Title 34 of the Code of Federal Regulations.

(2) Those items agreed upon in the nonpublic school services contract pursuant to Section 3066 of Title 5 of the California Administrative Code, with the exclusion of mental health services and 24-hour out-of-home care, for a seriously emotionally disturbed pupil who has been placed pursuant to Section 7572.5 of the Government Code.

(3) Mental health services when an individual with exceptional needs is placed in a nonpublic school outside of the State of California.

(d) The State Department of Social Services shall be responsible for determining the rate to be paid to providers for 24-hour out-of-home care for a seriously emotionally disturbed pupil in accordance with Section 15350 of the Welfare and Institutions Code.

(e) The County Welfare Department shall be responsible for issuing payments to providers for 24-hour out-of-home care for a seriously emotionally disturbed pupil in accordance with Section 18351 of the Welfare and Institutions Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 3066, Title 6, California Administrative Code.

Article 5. Occupational Therapy and Physical Therapy

60300. Definitions.

(a) "Medical Therapy Conference Team" means a team composed of the child parent or guardian, Medical Therapy Unit Conference physician, occupational therapist or physical therapist or both, if appropriate. Other attendees may be invited with parental consent and team approval for the purpose of coordination of patient services.

(b) "California Children Services Panel" means that group of physicians and other providers of services and equipment who have applied to and been approved by California Children Services to give services.

(c) "Independent county agency" means a county meeting the population criteria pursuant to Section 252 of the Health and Safety Code.

(d) "Dependent county agency" means a county meeting the population criteria pursuant to Sections 252 and 258 of the Health and Safety Code.

(e) "Medical therapy unit" means a designated public school location where the California Children Services medical therapy services are provided.

(f) "Occupational therapy and physical therapy" means medically necessary services provided by qualified medical personnel in accordance with Section 259 of the Health and Safety Code by reason of a medical diagnosis.

(g) "Qualified medical personnel" means occupational therapists and physical therapists licensed to practice in the State of California who are employed or designated by California Children Services.

(h) "Medically necessary therapy" means that therapy which has as its purpose the improvement or amelioration of a neuromuscular or musculoskeletal condition and shall include standard habilitation and rehabilitation procedures. This therapy shall not include interventions which can be carried out by educational personnel.

(i) "Necessary equipment" means that equipment provided by a local education agency which enables the medical therapy unit staff to provide the therapy services to individuals with exceptional needs.

(j) "Necessary space" means facilities needed by a medical therapy unit which includes one, but not necessarily both, of the following:

(1) "A primary medical therapy unit" which provides areas for conferences, office(s), private evaluation, treatment, training bathroom and kitchen, storage, and workshop. The specific requirements are dependent upon local needs as determined by joint agreement of the local California Children Services and local education agencies, and approved by both State Departments of Health Services and Education.

(2) "A satellite unit" is an adjunct to the primary medical therapy unit and is an assigned private area with necessary equipment to enable the California Children Services staff to provide services at a site closest to the pupil's school of attendance.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 250, Health and Safety Code.

60310. Local Interagency Agreement.

(a) In order to facilitate the provisions of services described in subdivisions a), (b), (d), and (e) of Section 7627 of the Government Code, and subdivisions (a), (b) and (c) of Section 7575 of the Government Code, each independent county agency and each authorized dependent county agency of California Children Services shall appoint a liaison person for the county agency of California Children Services. The County Superintendent of Schools shall ensure the appointment of a liaison person for the special education local plan areas by the superintendent or the designee of the responsible local education agency of the special education local plan area.

(b) Each independent county agency and each dependent county agency of California Children Services and the County Superintendent of Schools shall ensure, prior to July 6, 1986, the development and implementation of a local interagency agreement which shall include, but not be limited to a delineation of the process and procedure for:

(1) Identification of a liaison person within each local education agency in the special education local plan areas and within each California Children Services county agency;

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(p. 2061)****(Register 68, No. 1--1448)**

(2) Referral of pupils, birth to twenty-one years of age, who have or are suspected of having a neuromuscular, musculoskeletal, or other physical impairment requiring medically necessary occupational therapy or physical therapy.

(3) Timely exchange between the agencies of pertinent information concerning the individual with exception needs upon receiving patents written, informed consent obtained in accordance with Section 300.500 of Title 34, of the Code of Federal Regulations;

(4) Giving adequate notice to the local California Children Services' agency for all individualized education program team meetings when participation by their staff is required;

(5) Participation of California Children Services' representative in the individualized education program team meetings;

(6) Developing or amending the therapy services indicated on the pupil's individualized education program in accordance with Section 56341 of the Education Code;

(7) Transportation of individuals with exceptional needs to receive California Children Services' medically necessary occupational therapy or physical therapy services at the primary medical therapy unit or satellite unit;

(8) Determining the location of California Children Services' primary medical therapy or satellite units;

(9) Provision and maintenance of necessary space and equipment, including the administrative and fiscal responsibilities;

(10) Approval of the utilization of designated therapy space when not in use by California Children Services' staff; and,

(11) Provision of medically necessary therapy services to pupils residing in State Special Schools, when appropriate.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

60320. Referral and Assessment.

(a) The individualized education program team shall keep a record of all referrals of parents of handicapped pupils to California Children Services to determine the need for medically necessary occupational therapy or physical therapy.

(1) The local education agency or State Special School shall notify California Children Services of the proposed date of the individualized education program meeting.

(2) California Children Services shall develop an assessment plan and obtain the parent's written informed consent pursuant to Section 300.500 of Title 34 of the Code of Federal Regulations and Section 7572 of the Government Code.

(3) The California Children Services shall notify the local education agency or the State Special School if the evaluations cannot be completed in time for the individualized education program team meeting. This notice shall include the date when the evaluations are expected to be completed and any request for extension of the 50-day time line in Section 56344 of the Education Code.

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(p. 2062)

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(Register at. No. 1-1-4-88)

(4) The individualized education program team administrator or designee shall seek the parent's written agreement to the time extension.

(b) To qualify for the provision of medically necessary occupational therapy or physical therapy by California Children Services, the pupil must:

(1) Meet the eligibility requirements as defined in Sections 250.5 and 253.5 of the Health and Safety Code;

(2) Need medically necessary therapy as recommended or approved by the Medical Therapy Conference Team; and,

(3) Be recommended to the individualized education program team by a California Children Services panel physician of the appropriate specialty for treating the condition requiring therapy;

(c) California Children Services shall provide the individualized education program team with the necessary assessment information in accordance with Section 56327 of the Education Code. When the California Children Services' panel physician determines that a pupil does not need medically necessary therapy the individualized education program team shall be provided with a statement which delineates the bases for the determination.

(d) For those pupils who meet eligibility requirements defined in Section 250.5 of the Health and Safety Code and whose capabilities are such that skilled services of occupational or physical therapists are not required to meet their needs, the Medical Therapy Conference Team shall identify consultation needs.

(e) When providing medically necessary therapy, the California Children Services' treatment plan may be used as the required written information for inclusion as a related service on the individualized education program and shall be attached thereto.

(f) For those pupils who do not need medically necessary therapy the individualized education program team will review the California Children Services' report and the independent assessment as well as assess the pupil in all areas of suspected disability to determine which activities may be required to assist the pupil to benefit from special education.

(g) When the individualized education program team determines that the activities are necessary, goals and objectives relating to the activities identified in the assessment reports shall be written and provided by qualified personnel whose employment standards are defined in Article 4 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Sections 250.5 and 253.5, Health and Safety Code.

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§ 60500

(p. 2063)

(Register 84, No. 1—1-4-86)

60330. Space and Equipment for Occupational Therapy and Physical Therapy.

(a) The primary medical therapy unit and satellite units shall be for the exclusive use of the California Children Services' staff when they are on site. The special education administrator of the local education agency in which the units are located shall coordinate with the California Children Services' staff for other use of the space.

(b) Each special education local plan required in Section 56200 of the Education Code shall include:

(1) Which local education agency shall be responsible for the provision, maintenance, and operation of the facility housing the primary medical therapy unit and satellite units on a twelve-month basis.

(2) Which local education agency shall have the fiscal responsibility for the provision and maintenance of necessary equipment and instructional supplies; and

(3) The process for any change of responsibility or relocation of the primary medical therapy unit and any satellite units.

(c) The state Departments of Education and Health Services shall develop guidelines for local use when designing, remodeling, relocating, and equipping a medical therapy unit and any satellite unit.

(d) AU construction and relocation of primary medical therapy units must be approved by the State Departments of Education and Health Services.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

Article 6. Home Health Aide

60400. Specialized Health Needs Aide.

(a) Individuals with exceptional needs eligible for a home health aide in accordance with Section 7575(e) of the Government Code shall be all of the following:

(1) A Medi-Cal beneficiary.

(2) Receiving services from a home health agency pursuant to Section 51337 of Title 22 of the California Administrative Code.

(3) Considered for an educational placement outside of the home.

(b) Individuals with exceptional needs who are not beneficiaries of Medi-Cal shall have their specialized health needs provided by the responsible educational agency, pursuant to Section 49423.5 of the Education Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 51337, Title 22, California Administrative Code.

Article 7. Licensing a Community Care Facility

60500. Exchange of Information.

(a) "Shall consult" as used in Section 7580 of the Government Code, means the exchange of written information between the Community Care Licensing district office of the Department of Social Services, the applicant facility, and the special education local plan area administrator in consultation with the local district in which the facility is to be located.

(b) Community Care Licensing ~~district~~ officer and the county office of education shall annually exchange information describing how special education services are geographically organized and designate contact persons in the county office of education and the Social Services ~~district~~ office.

(c) Community Care Licensing ~~district~~ offices, upon receiving an application to license a new group home or small family home or to increase the capacity of an existing group home or small family home which serves or will serve pupils, birth to eighteen years of age, shall provide the county office of education with a copy of the application face sheet (LIC 200). The county office of education shall forward the face sheet to the appropriate special education local plan area administrator.

(d) Within 15 days of the receipt of the application face sheet, the special education local plan area administrator and the administrator of the local educational agency in which the new or expanded facility is located shall provide the applicant with the following information:

(1) The types and locations of public and state certified nonpublic special education programs available within the special education local plan area for the proposed pupil population; and

(2) the ability of the education agencies within the special education local plan area to absorb, expand, or to open new programs to meet the needs of the proposed pupil population given the limitations of Instructional Personnel Service units, available school facilities, funds, and staff.

(e) The Community Care Licensing District Office of the Department of Social Services shall notify the county office of education when a group home or small family home is licensed by providing a copy of the license notice (LIC 272).

(f) The county office of education, in accordance with Section 56156(d) of the Education Code shall provide the special education local plan area administrator with a list of the currently licensed group homes and small family homes within the county.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code; and Section 56156, Education Code.

Article 8. Procedural Safeguards

60550. 'Due Process Hearings.

(a) Due process hearing procedures apply to the resolution of disagreements between a parent and a public agency regarding the proposal or refusal of a public agency to initiate or change the identification, assessment, educational placement, or the provision of special education and related services to the pupil.

(b) Upon receiving a request for a due process hearing regarding the services provided or refused by another agency, the Superintendent of Public Instruction shall send the state and local agency involved a copy of the hearing request, the name of the assigned mediator, and the date of the mediation meeting in accordance with Section 56503 of the Education Code. Nothing in this section shall preclude any party from waiving mediation.

(c) If the mediator cannot resolve the issues, a state-level hearing shall be conducted by a hearing officer assigned by the Office of Administrative Hearings in accordance with Section 56505 of the Education Code.

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§ 60610
(p. 2065)

(Register 86, No. 1-14-86)

(d) The agency which provides the service in dispute is **responsible** for preparing documentation and providing testimony **supporting its position**.

(e) The State Department of Education is **fiscally responsible for services** provided by the mediator and the Office of Administrative Hearings in **response** to a parent's request for a due process hearing.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 56156(d), Education Code.

Article 9. Interagency Dispute Resolution

60600. Application of Procedures.

(a) The procedures of this article apply when there is a dispute between or among the State Department of Education or **local** education agency or both and any agency included in Sections 7575 and 7576 of the Government Code over the provision of **occupational therapy, physical therapy, psychotherapy, or** other mental health services, when **such** services are contained in a **child's** individualized education program.

(b) A dispute over the provision of services means a dispute over which agency is to **actually** deliver the service, or to pay for the services, when the service is **contained in the child's** individualized education program.

(c) These procedures apply only where the disputed **service** has been included in the individualized education program in accordance with Chapter 26 (commencing with Section 7570) of Division 7 of Title 1 of the **Government Code**. Whenever a service has been included in an individualized **education** program by an individualized education program team without the recommendation of the **qualified professional** in accordance with Section 7572 of the Government Code, the **local** education **agency** shall be solely responsible for the provision of the service. In such circumstances, the dispute, if any, is between the parent and the **local educational** agency and shall be **resolved** through the due process or complaint procedures, pursuant to Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code, as applicable.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

60610. Resolution Procedure.

(a) Whenever notification is Filed pursuant to subdivision (a) of Section 7585 of the Government Code, the dispute procedures shall not interfere with the pupil's right to receive a free, appropriate public education.

(1) If one of the agencies specified in Sections 7575, 7576, 7577, and 7578 of the Government Code has been providing the service prior to notification of the failure to provide a related service or designated instruction and service that agency shall continue to provide the service until the dispute resolution proceedings are completed.

(2) If no agency specified in this section has provided the service prior to the notification of the dispute, the State Superintendent of Public Instruction shall ensure that the **service** is provided in accordance with the individualized education program, until the dispute resolution proceedings are completed.

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(p. 2066)

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(Register 88, No. 1-1-88)

(3) Arrangements, other than those specified in subparagraphs (1) and (2), may be by written agreement between the involved public agencies, provided the pupil's individualized education program is not altered, except as to which agency delivers or pays for the service if such specification is included in the individualized education program.

(b) In resolving the dispute, the Superintendent of Public Instruction and Secretary of the Health and Welfare Agency shall meet to resolve the issue within 15 days of receipt of notice.

(c) Once the dispute resolution procedures have been completed, the agency determined responsible for the service shall pay, for, or provide the service, and shall reimburse the other agency which provided the service pursuant to paragraph (a) of this section if applicable.

(d) A written copy of the resolution shall be mailed to affected parties pursuant to Section 7585 of the Government Code.

NOTE: Authority cited: Section 7587, Government Code. Reference: Section 7587, Government Code.

COMMISSION ON STATE MANDATES

1130 K STREET, SUITE 1150

SACRAMENTO, CA 95814

6) 323-3562



August 27, 1987

Susan A. Chapman
County of Santa Clara
Office of the County Counsel
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110

RE: CSM-4282

Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Ms. Chapman:

Your test claim filing was received in this office on August 17, 1987. This test claim requests that the commission consider whether reimbursable "state mandated costs" resulted from Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Division 9 of Title 2 of the California Administrative Code, Handicapped and Disabled Students. This claim is set for hearing on January 21, 1988, at 10:00 a.m. in Room 2040, State Capitol; Sacramento, California.

To aid in its decision on the mandated cost issue; the commission requests that all state agencies receiving this letter analyze the merits of the claim and make recommendations on its validity under the provisions of the Government Code, Sections 17510 through 17630. Specifically, state agencies should consider whether the above entitled statutes and regulations have imposed a new program upon counties, or a higher level of service in an existing county program.

State agency recommendations should include whether a representative will appear at the hearing. Some departments may be required to send a representative. All state agency recommendations will be immediately forwarded to claimants and their representatives upon receipt by this office. Please be advised that, during the hearing, a court reporter will be present and a tape recording will be made. Any persons wishing either a tape recording or transcript should direct a written request to this office. A fee will be charged for preparation of the tape and/or transcript.

Written state agency recommendations must be received by this office no later than November 26, 1987, so the claimants and their representatives will have sufficient time to respond to any issues raised. Rebuttals from the claimant must be submitted by December 17, 1987. All testimonial and documentary evidence must be authenticated by declarations under penalty of perjury signed, by persons who are authorized or competent to do so, and the basis for authorization or competence must be stated in the declaration.

Based upon information provided by all interested parties, the commission will determine whether the claim meets the statutory requirements. Should the commission determine that a mandate does exist, parameters and guidelines for reimbursing all eligible local entities will be developed. In accordance with the commission's regulations the claimant will be responsible for providing the first draft of the parameters and guidelines.

Claimants and state agencies should note that they are required to submit all information, including arguments, declarations, laws, and evidence being relied upon, to support their position by the due dates. shown.. If substantial new evidence or argument, either oral or written, is presented at the hearing, a probable consequence will be the continuation of the claim to a subsequent hearing. The continuation will be required so the opposing party and commission staff will have the opportunity to review the new information.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,



STEPHEN R. LEHMAN
Assistant Executive Director

SRL: jb:0105s

Enclosure: Test Claim

cc: Jim Apps, Department of Finance--Recommendation Due: 11/26/87
Glen Beatie, State Controller's Office
Phil Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office".
Lynn Whetstone; Department of Mental Health--Recommendation Due: 11/26/87
William Pieper, Department of Education--Recommendation Due: 11/26/87
Allan Burdick, County Supervisors Association of California
Marla Zwolan, David M. Griffith & Associates

GERALD J. GEERLINGS
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SHERRY G. GORDON
PAMELA J. ANDERSON
MARY MITCHELL

November 17, 1987

Stephen R. Lehman
assistant Executive Director
State of California
Commission on State Mandates
1130 K Street, Suite 1150
Sacramento, CA 95814



Re: CSM-4282; Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman,

The enclosed declaration of John J. Ryan, Director of the Riverside County Department of Mental Health, is being submitted to you in support of the claim of the County of Santa Clara in the above-referenced matter.

The County of Riverside is desirous of having this declaration considered by the coinmission in support of the claim of Santa Clara, and accordingly we are formally requesting that it be submitted for the commission's consideration.

If problems arise in this matter, please contact me at your convenience.

Thank you for your consideration in this matter.

Sincerely,

WILLIAM C. KATZENSTEIN
Deputy County Counsel

WCK:bas

cc: Susan A. Chapman, Deputy County Counsel, Santa Clara County
Andrea Hix, David M. Griffith and Associates

1 November 17, 1987

2
3 RE: CSM-4282, The supporting declaration of the County of
4 Riverside re;

5 Claim of County of Santa Clara
6 Chapter 1747, Statutes of 1984: Chapter 1274, Statutes of 1985;
7 Title 2, CAC, Division 9
8 Handicapped and Disabled Students

9 I, JOHN J. RYAN, Director of the Riverside County
10 Department of Mental Health, declare;

11 In fiscal year 1986/87 Riverside County Mental Health
12 served 448 handicapped children as mandated by AB 3632 and AB 882
13 (Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of
14 1985). Those services cost \$993,474 while the State provided an
15 allocation to the county of only \$179,370 for the services. Thus,
16 \$814,104 had to be expended out of the regular Short Doyle
17 allocation (90% State, 10% County) to serve those children. As of
18 June 30, 1987, 198 children who had been assessed as needing
19 services under this mandated program were, because of limited
20 resources, still waiting to receive ongoing treatment. This was
21 in addition to 195 handicapped children already receiving services.

22 Because of the mandate to serve these children they are
23 now receiving services before other children who have not been
24 referred under this program. The only exception is those in
25 crisis such as suicidal youth. Therefore, other children in need
26 have increasingly limited access to public mental health
27 services. As more and more AB 3632/882 referred children enter
28 the system, the costs under this mandate are increasing, and
available services to other children are decreasing. Projections

1 of costs for this program to the County of Riverside for fiscal
2 year 1987/88 are at least \$1.5 million, but may be as much as \$2.3
3 million as more and more children enter the system. In
4 comparison, the State has allocated \$513,165 to the County of
5 Riverside for this program for fiscal year 1987/88. The costs to
6 the county in excess of the above-mentioned \$513,165 will come out
7 of the county's regular Short Doyle allocation.

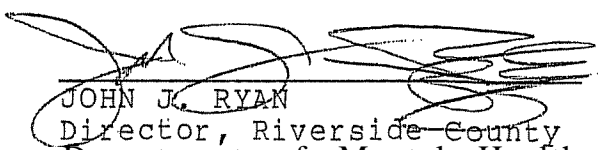
8 The most intensive services such as day treatment
9 (minimum 3 hours a day, 2 - 4 days a week) are now accepting only
10 AB 3632/882 children. Thus, other children with serious emotional
11 problems such as abused children, children who are repeated
12 failures in adoptive placement, some psychotic children, multi
13 problem children, children ordered into treatment by the court,
14 and children on juvenile probation have the intensive day services
15 unavailable to them. They are also on waiting lists for very
16 limited outpatient resources. Once they do receive a mental
17 health evaluation they have a long wait for ongoing therapy in
18 some parts of the county. More treatment is now being provided in
19 groups with less and less resources available to provide
20 individual and family therapy. Children who are showing the
21 beginnings of serious problems, often younger children, are
22 virtually excluded from services. As resources focus on the one
23 population there is also less publicizing of the services and less
24 facilitating of referrals of needy children from the general
25 community, and from other agencies.

26 County Mental Health has found it necessary to focus
27 services on the AB 3632/882 population because of the State and
28 Federal mandates but even with that focus, has been unable to keep

up with the demand for service by that population much less by
other needy children,

I declare under penalty of perjury that the foregoing is
true and correct.

Executed at Riverside, California on 11/17/87.


JOHN J. RYAN
Director, Riverside County
-Department of Mental Health

1101P



CALIFORNIA STATE DEPARTMENT OF EDUCATION

721 Capitol Mall

Sacramento, CA 95814-4785

CSM Attachment C

November 24, 1987



Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814

RE: CSM-4282
Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman:

Basis of Claim

Santa Clara County is claiming a state mandated cost of \$3,081,000 associated with the provision of mental health services for handicapped children in 1986-87. Specifically, Santa Clara County claims that it was required to provide mental health assessment, case management, and treatment for children who were residents of the county,

Discussion

Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985, and Title 2 CAC Section 60000 et.seq. shifted the responsibility of providing psychotherapy and other mental health services to pupils with exceptional needs, from the State Department of Education (SDE) to the Department of Mental Health (DMH).

To facilitate this shift in responsibilities, \$1.6 million was appropriated from the General Fund to DMH during the period from March 1, 1986 -June 30, 1986 for the purposes of assessment and participation in IEP meetings. An amount of \$2 million was appropriated in the 1986-87 Budget Act to the DMH to provide non-educational services, such as assessments, treatment and case management services; and an additional \$2.7 million was transferred from the SDE to the DMH for assessments and mental health services. It was determined at the time that this level of funding was sufficient to cover the transferred services.

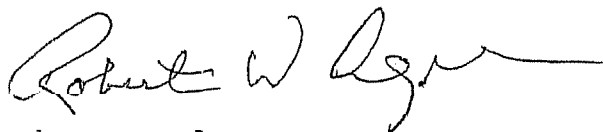
At issue in Santa Clara County's claim is whether the funds made available to mental health agencies were in fact sufficient to support the required psychotherapy and other mental health services. In evaluating this claim, we would ask the Commission to consider the following clarifying points:

- o The costs of **treatment** to children who were served by **mental** health agencies prior to the **passage of** these statutes, are not new or increased costs.
- o "Medication Monitoring" is not an educationally related service and is not a mental health responsibility pursuant to Chapter 1747, 1984 Statutes, Chapter 1274, 1985 Statutes, or Title 2.
- o County mental health agencies still determine who they will serve and the frequency of the service.
- o School districts and county mental health agencies share the responsibility for serving all handicapped pupils pursuant to their IEPs; mental health agencies are responsible for those pupils with more severe mental conditions only after the local educational agencies have exhausted their resources.
- o County mental health agencies may still use private insurance provided that the premiums are not increased or lifetime benefits reduced as a result of such usage.
- o The statutes do not mandate the use of private therapists; if private therapists are used, it would be the mental health agency's decision.
- o County mental health agencies need not assess pupils, but may rely upon current assessments. The students referred to mental health agencies have substantial assessment data in their files, and assessments performed by mental health may in fact be duplicative and unnecessary.

In summary, county mental health agencies are in fact required to provide services to pupils that were not previously required of them; however, funds were appropriated, and transferred to DMH in an effort to cover the costs incurred for such services.

If you have any questions regarding the above information, please contact Janet Sterling of my staff at (916) 322-1645.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert W. Agee", followed by a long horizontal flourish.

Robert W. Agee
Deputy Superintendent for Field Services
(916) 324-5923

RWA/JS/dg

Memorandum

November 30, 1987

To : Stephen R. Lehman, Assistant Executive Director
Commission on State Mandates

From : Department of Finance
DIRECTOR'S OFFICE

Subject: Claim No. CSM-4282 from the County of Santa Clara based on Chapter 1747, Statutes of 1984, Chapter 1274, Statutes of 1985 and Title 2, California Administrative Code, Division 9, relating to handicapped and disabled students



This claim is based on Chapter 1747/84, Chapter 1274/85 and Division 9 of Title 2 of the California Administrative Code which revise laws affecting the provision of services to handicapped and disabled students. The claimant alleges that, with the passage of the legislation cited above, the County of Santa Clara was required to undertake assessments of handicapped children, assume case management responsibilities and undertake treatment of children for which it was previously not responsible,

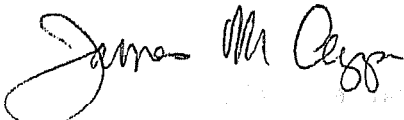
The County of Santa Clara further alleges that the cost of providing the above mentioned services falls outside the negotiated net amount contract between the the claimant and the State Department of Mental Health (SDMH) for provision of services pursuant to the Short-Doyle Act. For the 1986-87 fiscal year, the County of Santa Clara is claiming net costs in the amount of \$3,081,000.

The Department of Finance has reviewed this claim and concludes that Chapters 1747/84 and 1274/85 and the resultant regulations do not impose a new program or higher level of service upon local mental health agencies for which reimbursement should be provided through the Commission on State Mandates' claims process. This position is based largely on the fact that, although the responsibility for certain functions was transferred from schools to counties, \$2,700,000 was transferred from the State' Department of Education (SDE) to the Department of Mental Health budget in the 1986-87 fiscal year expressly for the purpose of funding the activities required to be transferred from SDE to SDMH and that an additional \$2,000,000 was appropriated to SDMH for purposes of the program.

Whether or not the amount of funds provided for program purposes was adequate and whether or not any unfunded portion of the program is subject to the provisions of the negotiated net amount contract between the claimant and the SDMH are issues which may best be resolved through negotiations between those two parties. Another issue which should be similarly resolved is whether or not the number of clients, level of activity and types of activities claimed by Santa Clara County are appropriate, given that many requirements of the new program overlapped with those of pre-existing programs.

We would also point out that the subject matter of this claim, i.e., the provision of services under Individualized Education Programs (IEP) is essentially the same as the basis of the pending lawsuit over the Board of Control's decision that the State's special education program is a reimbursable State mandate. In view of that pending litigation, the Commission may want to consider whether it is appropriate for them to proceed with and ultimately render a decision on this claim.

If you have any questions concerning this recommendation, please contact James M. Apps at (916) 323-6368.



Richard Ray
Program Budget Manager

Attachments

LR: 1566L

cc: Phillip T. Bird, Attorney General's Office
Steve Shea, Legislative Analyst's Office
Glen Beatie, State Controller's Office
Lynn Whetstone, Department of Mental Health
Robert Agee, Department of Education

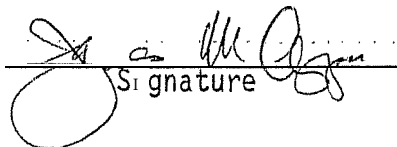
DECLARATION OF JAMES M APPS
DEPARTMENT OF FINANCE
CLAIM NO. CSM 4282

1. I am currently employed on the State of California, Department of Finance, am familiar with the duties of the department and am authorized to make this declaration on behalf of the department.
2. Section 6, Article XIII B of the California Constitution reads as follows:

Whenever the Legislature or any State agency mandates a new program or high level of service on any local government, the State shall provide a subvention of funds to reimburse such local governments for the cost of such program or increased level service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
 - (a) Legislative mandates requested by the local agency affected;
 - (b) Legislation defining a new crime or changing an existing definition of a crime; or
 - (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.
3. In its "Local Cost Estimate" for AB 3632 prior to its enactment as Chapter 1747/84 (See Attachment 2), the Department of Finance concluded that there was no reimbursable mandate in that legislation.

"I certify under penalty of perjury that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

11/5 0/87 Sacramento CA
Date and Place


Signature

LR:1566L

	NO.	ISSUE DATE	BILL NUMBER	Attachment 2
Local Cost	2	AUG 10 1984	AB 3632	
ESTIMATE	AUTHOR	DATE LAST AMENDED		
Department of Finance	W. Brown, et, al.	August 7, 1984		

I. SUMMARY OF LOCAL IMPACT:

1. Requires various state agencies to coordinate the delivery of designated instruction services to handicapped children.
2. Requires local agencies to report the fiscal impact resulting from this bill through appropriate State agencies to the Department of Finance.

I I. SUMMARY OF LOCAL COST: (Local Agency(s) Affected)	1983-84	1984-85	1985-86	1986-87	Fund
	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	<u>FC</u> <u>Amount</u>	
REIMBURSABLE:	--	--	--	--	
NON-REIMBURSABLE:	--	--	--	--	

III. ANALYSIS:

A. Introduction

Current law (Section 56363 of the Education Code) provides that local school agencies shall provide designated instruction and services as specified in the individualized education program for handicapped children. Such services include but are not limited to: language and speech development and remediation, audiological services, orientation and mobility instruction, instruction in home or hospital, adapted physical education and others: This bill provides that this designated instruction and services shall be the joint responsibility of the Superintendent of Public Instruction and the Secretary of Health and Welfare, and they shall ensure utilization of all State and Federal resources available to provide handicapped children with a free appropriate public education.

The bill also provides that the Superintendent of Public Instruction shall ensure that local education agencies provide special education and those related services and designated instruction and services contained in a child's individualized education program that are necessary for the child to benefit educationally from his or her instructional program.

In addition, the bill lists specific duties and responsibilities of the State Departments of Health Services, Social Services, Developmental Services, Rehabilitation, and the Mental Health. The bill also requires the Director of Finance to review all applicable General Fund items of appropriation for local assistance for social, mental health, developmental and health services for children administered by each department and transfer if necessary, funds, including funds which may be allocated to local educational agencies, between these items of appropriation, to cover the costs of services provided pursuant to the bill.

(continued)

PREPARED	Date *	REVIEWED	Date *	APPROVED	Date *
<i>Frank J. Long</i>	<i>8-10-84</i>	*		<i>James W. Melly</i>	<i>8-10-84</i>
LP:1029A/261001					

W, Brown, et. al,

August 7, 1984

AB 3632

I. ANALYSIS (continued)

The bill also requires that each local agency affected by chapter 26 (commencing with Section 7570) Division 7 of Title I of the Government Code as added by this bill shall identify expenditures which were previously borne by the agency which, as a result of enactment by this bill were shifted to another agency, or shall identify its responsibility for expenditures which have been acquired due to this bill. The local agency shall report any of these shifts in responsibility through appropriate state agencies to the Department of Finance,

B. Working Data

1. A representative from Los Angeles City Schools indicates that the bill would not result in additional costs to schools because current provisions require school agencies to provide designated instruction and services to handicapped children. The purpose of the bill is to require the Secretary of the Health and Welfare Agency to share the responsibility with the Superintendent of Public Instruction for providing specified services because under current provisions some children have not received adequate levels of, service from the various state agencies.
2. A representative from the State Department of Health Service (DHS) indicates that this bill would result in major costs because the Secretary of Health and Welfare would be responsible through the OHS for providing health services to handicapped students.
3. A representative from the County of Los Angeles indicates that this bill would not result in any additional costs to the county because any services which the county may have to provide to handicapped students would be paid for by the State. The reporting requirements specified by this bill would not impact the county.
4. Section 2253.2 (c) 3 of the Revenue and Taxation Code reads as follows:

The Board of Control shall not consider, pursuant to either Section 2250 of this code or to Section 905.2 of the Government Code, any claims submitted by a local agency or school district if the claim is for two hundred dollars (\$200) or less.

C. Assumption

Local agencies statewide will be able to provide the appropriate State agencies expenditure information at a cost of less than \$200. Therefore, such local agencies would not be eligible to submit claims for reimbursement to the State Board of Control.

D. Conclusion

Based on the above analysis, we conclude that this bill does not contain a reimbursable mandate as defined in Article XIII B of the California Constitution and Sections 2231 or 2234 of the Revenue and Taxation Code. The "general" disclaimer in the bill is appropriate.

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DEPARTMENT OF MENTAL HEALTH
1000 - 9th STREET
SACRAMENTO, CA 95814
(916) 323-8173



November 30, 1987

Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 "K" Street, Suite 1150
Sacramento, CA 95814

Dear Mr. Lehman:

In response to your August 27, 1987 letter to the County of Santa Clara regarding the county's test claim (CSM-4282) for payment of costs incurred pursuant to Chapter 1747 of the Statutes of 1984 (AB 3632), Chapter 1274 of the Statutes of 1985 (AB 882) and Division 9 of Title 2 of the California Administrative Code, the Department of Mental Health provides the following information and recommendations. As requested, our response will specifically consider whether these statutes and regulations have imposed a new program upon counties or a higher level of service in an existing county program.

BACKGROUND

Under The Education for All Handicapped Children Act of 1975 (20 U.S.C. §1401 et seq.) (hereafter Public Law 94-142), each participating state must make available to all handicapped children, as defined, within specific age ranges and timelines, a free appropriate education. Section 300.4 of Title 34 of the Code of Federal Regulations defines "free appropriate public education" as "Special education under public supervision and direction, and without charge" An "individualized education program" (IEP) must be established for each eligible handicapped child. An IEP includes special education and related services needed by the child as determined by the child's current evaluation.

California has been a participant in the program described by Public Law 94-142 since 1980. Chapter 797 of the Statutes of 1980, which became law on July 28, 1980, restructured and added code sections implementing

sections of the Education Code relating to California's Master Plan for Special Education statewide, (See Sections 56000 et seq. of the Education Code.)

Chapter 1747 of the Statutes of 1984 (hereafter Chapter 1747), Chapter 1274 of the Statutes of 1984 (hereafter Chapter 1274), and implementing regulations, Sections 60000 et seq. of Title 2 of the California Administrative Code, changed the administrative manner in which this state provides educationally related services to handicapped children. These statutes and implementing regulations shifted roles and responsibilities at the county level among the schools, welfare departments, and mental health departments. Among other things, these statutes added the provisions of Chapter 26.5 (commencing with Section 7570) to Division 7 of Title 1 of the Government Code entitled "Interagency Responsibilities for Providing Services to Handicapped Children. " The provisions of Chapter 26.5 require county mental health programs to: act as the lead case manager when a child's individualized education program calls for residential placement (sub. (1), Sec. 7572.5 Gov. Code); if designated by the State Department of Mental Health, provide psychotherapy or other mental health services when required in a child's individualized education program (Sec. 7576 Gov. Code); and, provide specified assessment services (see Secs. 7572, 7572.5, and 7582 Gov. Code and Sec. 18 of Chapter 1274 of the Statutes of 1985).

In reviewing the claim of Santa Clara County, the Department of Mental Health makes the following observations :

I. Costs claimed by the County are costs mandated by the federal government

Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 U.S.C. 794) requires that "handicapped individuals" shall not be subjected to discrimination under, excluded from participation in, or denied the benefits of "any program or activity receiving Federal financial assistance". Regulations promulgated under

the authority of Section 504, specifically 34 CFR 104.33, require that recipients of federal funding provide "a free appropriate education" consisting of "special education services . . . , that meet the needs of handicapped persons as adequately as the needs of non-handicapped persons, "

Consequently, it would appear that any local agency receiving federal assistance for programs which serve handicapped individuals (which would include educationally related services) would have to provide some unique services to handicapped individuals in order to continue receiving federal funding.

Section 17513 of the Government Code provides, in pertinent part, that: "... 'Costs mandated by the federal government' includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state"

Clearly, noncompliance with Section 504 and implementing regulations and Public Law 94-142 would result in "substantial monetary loss" for the State since all federal funding would be lost and, therefore, come within the definition of "costs mandated by the federal government" set forth in Section 17513.

I I . Chapters 1747 and 1274 and their implementing regulations affirmed for the State that which had been declared existing law by actions of the courts

There are numerous cases at the federal and state level, which were heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973, that would seem to indicate that handicapped individuals have a right to certain special services under the equal protection provisions of the Constitution of the United States (see, for example Pennsylvania Assn. for Retarded Children v. Commonwealth, (1971) 334 F.Supp. 1257 and Mills v. Board of Education of District of Columbia, (1972) 348 F.Supp. 866.)

Therefore, the implementation of Chapters 1747 and 1274 merely affirm for the state that which has been declared existing law by actions of the court.

III. Costs claimed by the County are not costs mandated by the State, but costs incurred by contractual obligation.

Any increased costs incurred by the county as a result of the enactment of Chapters 1747 and 1275, and their implementing regulations, are pursuant to a contractual agreement, and not costs mandated by the state.

As a general rule, community mental health services are provided pursuant to an annual Short-Doyle plan. Section 5705 provides that a county's annual Short-Doyle plan is a contract between the county and the state. Services provided in accordance with an annual Short-Doyle plan are reimbursed at actual cost.

In 1983, the statutes were amended (Sec. 5705.2 Welf. & Inst. Code) to allow the Director of Mental Health to negotiate net amount contracts between counties and the State Department of Mental Health in lieu of the annual Short-Doyle plan and budget (Chapter 1207, Statutes of 1983). The negotiated net amount contracts are not audited to cost and the counties are able to utilize any savings that occur pursuant to the negotiated net amount contract.

Provisions of a negotiated net amount contract must include, among other things, assurance of an adequate quality and quantity of services and an assumption of the financial risk by the County in providing all mental health services to the population described and enumerated in the approved contract within the negotiated net amount.

For the fiscal year 1986-87, Santa Clara County entered into a negotiated net amount contract with the State to render mental health services in Santa Clara County. In that contract the language clearly states that the County has agreed to provide services in accordance with the following principal: "(1) a continuum of mental health services which are required by statute . . ." The provision of services to children is set forth in Exhibit D.

Therefore, the provision of needed services pursuant to Chapters 17'17 and 1274 is within the scope of the contract.

Thus, any cost for mental health services to minors, which is a population that must be provided for (Sec. 5651.1 Welf. & Inst. Code), that are not reimbursed from the negotiated net amount, is a financial risk the County assumed when it became a party to a negotiated net amount contract.

IV. Chapters 1747 and 1274 do not impose a "new program"

Chapters 1747 and 1274 do not clearly constitute a new program,' but, instead, are a redelineation of the responsibilities of carrying out an existing local program, a program that was implemented by statute at the local level in 1980, as discussed above. (See Sections 56000 et seq. of the Education Code.) While Chapters 1747 and 1274 specified certain responsibilities of community mental health programs in providing services to handicapped students, community mental health programs were already providing assessments and mental health treatment for many handicapped children in carrying out their responsibilities under the Short-Doyle Act (Section 5600 et seq. of the Welf. & Inst. Code). In fact, the Santa Clara County claim notes that fully 215 out of 336 children receiving treatment were known to the mental health system prior to fiscal year 1986-87.

In recognizing that local mental health programs now have the responsibility for providing those mental health services to special education children which were previously paid for by the schools, Section 16 of Chapter 1274 required the transfer of funds, reported by local education agencies as having been previously spent by them for mental health services from the State Department of Education to the Department of Mental Health.

V. These statutes and regulations do not impose a
"higher level of service"

The Department of Mental Health acknowledges that the statutes may have resulted in an increase in the number of children being assessed as, needing mental health treatment due to the shift in responsibilities among county agencies. The Auditor General issued a finding to this effect in April 1987, when he reported that the number of special education students referred for non-educational services has increased since March 1, 1986 (Report No. P-640, page 17). A significant growth was recognized in the funding level in the 1987-88 budget. We do not agree, however, that this constitutes a mandate for a higher level of service.

Specifically, Santa Clara County argues that flexibility has been lost with regard to this program, since mental health services must be provided regardless of the severity of the mental condition and regardless of funding limitations.

However, Section 7572 states that:

"Whenever a service is to be considered for inclusion in a child's individualized education program (IEP), the local education agency shall invite the responsible public agency representative to meet with the IEP team to determine the need for the service, "

It is clear from these provisions that counties do maintain some flexibility as to who is served and what services are received. The local mental health representative will provide input to the IEP team as to the need for mental health treatment services.

The County claims that under Chapters 1747 and 1274, and implementing regulations, it may be required to pay for mental health services rendered by private therapists who are not county contract providers. Section 7576 of the Government Code allows a county:

"... to provide psychotherapy or other mental health services, when required in a child's IEP either directly or by contracting with another public agency, qualified individual or a state certified nonpublic, nonsectarian school or agency. "

Therefore, the County continues to maintain a prerogative as to how a required service will be provided and in no way is required to pay for services unless there is a contractual obligation to do so.

In conclusion, the Department of Mental Health does not conclude that Chapter 1747 of the Statutes of 1984, Chapter 1274 of the Statutes of 1985, and Division 9 of Title 2 of the California Administrative Code mandate a new program or a higher level of service on county government.

VI. State reimbursement is already provided to Santa Clara County for these services

The Short-Doyle Act specifically requires that mental health services be provided to children. Moreover, this act also includes maintenance of effort requirements with regard to children's services. Specifically, Section 5704.5 of the Welfare and Institutions Code provides that counties cannot decrease their proportion of mental health expenditures for children unless they can demonstrate that the need for such services has decreased. Further, Section 5704.6 requires that, with certain exceptions, counties must spend 50 percent of each noncategorical augmentation for children's services until such services represent 25 percent of the county's total mental health program.

The administration and the Legislature have recognized maintenance of effort requirements in appropriating funds to implement Chapters 1747 and 1274. Moreover, the Conference of Local Mental Health Directors, which is comprised of the directors of all of the county mental health programs, has also recognized a maintenance of effort in its estimates of program costs. (See attachment A.)

In the case of Santa Clara County's claim, then, the Department of Mental Health recommends that, should the Commission determine that these statutes constitute a reimbursable mandate, at a minimum a maintenance of effort requirement should be recognized.

Stephen R. Lehman

-8-

November 30, 1987

I hope that this information will prove useful to the Commission in making a determination as to the validity of the Santa Clara County claim for state-mandated local costs. The Department of Mental Health will also have a representative present at the January 21, 1988 hearing on this issue should additional information be required.

Should you have any questions, please contact Lynn E. Whetstone, Deputy Director, for Administration, at 3-8261.

Sincerely,

A handwritten signature in dark ink, appearing to read "Charles C. Harper", written over a horizontal line.

CHARLES C. HARPER
Chief Deputy Director

cc : Jim Apps
Department of Finance'

December 16, 1987

Donald L. Clark, County Counsel

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814



RE: CSM-4282
Claim of the County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Mental Health Services to Handicapped and Disabled Students

Dear Mr. Lehman:

This is in rebuttal to the responses filed by the Departments of Education, Mental Health, and Finance to the Test Claim filed by the County of Santa Clara with the Commission on State Mandates for costs relating to the mandate imposed by Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985; and Title 2, California Administrative Code, Division; 9, relating to the provision of mental health services to handicapped and disabled students.

I. Costs claimed by the County are not costs mandated by the federal government.

The Department of Mental Health asserts that the costs of complying with Chapters 1747 and 1274 and their implementing regulations are costs mandated by the federal government. This assertion is based on the fact that Section 504 of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1974 (P.L. 93-516, 29 U.S.C. 794), together with the implementing regulations, require that recipients of federal funding provide free, appropriate, public education to handicapped children, as well as supportive services necessary for the child to take advantage of that education. It is clear under federal law that supportive services includes, in some instances, mental health services. Nevertheless, the costs claimed by the County are not costs mandated by the federal government because the program is optional, and because, if a mandate exists, it is imposed on the State or on local educational agencies, not county mental health agencies.

A. The program established by Chapters 1747 and 1274 and their implementing regulations is not a mandate of the federal government, as federal law establishes an option program, not a mandated program, even if there are substantial financial incentives for participation in such programs. To the extent that Government Code section 17513 provides otherwise, it is unconstitutional.

Letter to Stephen R. Lehman
December 16, 1987
Page 2

California Constitution Article XIII B §6 'provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service

In defining reimbursable mandates, California Constitution Article XIII B §9(b) excludes "[a]ppropriations required for purposes of complying with mandates of the federal government which, without discretion, require an expenditure" by the governmental entity. A financially induced choice is not the same as a statutory requirement. City of Sacramento v. State of California (3980) 156 Cal.App.3d 182, 196; 203 Cal.Rptr. 258, disapproved on other grounds in County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58; ___ Cal. Rptr. ___.

Government Code §17513 defines "costs mandated by the federal government" excludable from reimbursable mandates as:

any increased costs incurred by a local agency . . . in order to comply with the requirements of a federal statute or regulation. . . [including] costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.,

As applied to this case, this statute is unconstitutional. Chapters 1747 and 1274 mandate a new or higher level of service. on local government, by requiring county mental health agencies to provide certain assessment, case management, and therapeutic services. This program otherwise would be a reimbursable state mandate under California Constitution Article XIII B §6. The increased costs incurred by the County were not "required for purposes of complying with mandates of the federal government which, without discretion, require an expenditure. " Therefore, the costs are not mandates of the federal government, as defined by California Constitution Article XIII B §9.

The State could choose not to implement the Education for All Handicapped Children Act individualized education program requirements. The effect of not fully implementing the Education for All Handicapped Children Act is a loss of federal benefits. The court of appeals has held that the application of Revenue & Taxation

Code § 2206¹. (predecessor to Government Code 517513) to federal laws which merely, provide financial incentives for compliance would conflict with the definition of a federal mandate contained in Article XIII B §9(b). City of Sacramento v. State of California, Id. at 198. city of Sacramento involved state legislation implementing changes, to the unemployment insurance system, which resulted in increased costs to all California employers, including local government. Failure to adopt the changes would have resulted in decertification of the state's unemployment insurance program, with a concomitant loss of tax credit for the state's private employers. In determining that the changes were not federally mandated, the court stated:

. . . [California Constitution Article XIII B §9(b)] defines a federal mandate as one leaving the state or local government no discretion as to alternatives. If participation in a federal program is optional, it follows that state legislation requiring local participation involves a state mandate under article XIII B, section 6. Revenue and Taxation Code section 2206 insofar as it defines as nonreimbursable federal mandates those federal programs which make state participation optional, even if substantial financial incentives indicate the desirability of participation, is invalid under article XIII B, section 6 and 9. Id. at 198-99. (Italics in original.)

In the present case, as in City of Sacramento, failure to enact legislation to implement the federal goals would involve a loss of financial benefits. Nevertheless, it is an optional program. The detailed requirements of the Education for All Handicapped Act--including mental health assessments and supportive services--are not generally required by federal law.

¹ Revenue & Taxation Code §2206, as amended in 1980, provided in part:

. . . "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact such law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. . . [and] does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

This language is substantially similar to the language of Government Code section 17513.

- B. If the services described in Chapters 1747 and 1274 and their implementing regulations are federally mandated, the mandate is not imposed on county mental health agencies but on the State or on local educational agencies. Therefore, to the extent that Chapters 1747 and 1274 and their implementing regulations impose requirements on local mental health agencies, they constitute a state mandate.

If a state decides to implement the federal Education for All Handicapped program, nothing in federal law requires the State to impose on county mental health agencies the responsibility for providing mental health assessments, treatment or case management for handicapped students pursuant to the federal individualized education program standards; The state could impose the responsibilities on local school districts, as it did before the passage of Chapter 1747.

Federal law requires states which receive federal funding to have in place a program applying to the state as a whole. See 34 Code of Federal Regulations 5300.1 et seq. It is the state that has the responsibility. Federal regulations generally do not establish which state or local agency will be responsible for certain functions. States have flexibility in designing their programs. Generally, however, where federal regulation do identify a particular local or state agency, it is agencies responsible for education which are identified. For example, 34 C.F.R. §300.600(a) provides:

- The State educational agency is responsible for insuring:
- (1) That the requirements of this part are carried out; and
 - (2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency:
 - (i) Is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and
 - (ii) Meets education standards of the State educational agency (including the requirements of this part).

When the state chose to transfer to county mental health agencies a portion of the responsibilities which local education agencies had for handicapped children, it imposed a mandate on counties.

- II. Chapters 1747 and 1274 and their implementing regulations do not merely affirm for the State that which had been declared existing law by actions of the courts.

Department of Mental Health asserts that implementation of Chapters 1747 and 1274 merely confirm for the State that which has been

declared existing law by actions of the court. That is not the case. Absent this legislation, no existing court decisions impose on counties the responsibility of providing services which, essentially, relate to the provision of educational services.

Court decisions at the federal and state level heard before the enactment of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973 establishing the rights of handicapped individuals were decided under due process and equal protection theories. Mills v. Board of Education of the District of Columbia (1972) 348 F.Supp. 866 held that the Board of Education, by failing to provide special education to certain disturbed children, denied due process to the children and the class they represented. Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania (1971) 334 F.Supp. 1257 involved the equal access to educational services for retarded children. Neither case involved the imposition on local mental health agencies of responsibilities to provide services supportive to the educational requirements of handicapped children.

The County is not providing public education for the children generally served through the individualized education program. This is a responsibility of the local educational agencies. To the extent existing court decisions may have held that special educationally-related services to handicapped children are required, the requirement was imposed on local education agencies, not county mental health agencies.

III. Costs claimed by the County are mandated by Chapters 1747 and 1274 and their implementing regulations, not by contractual obligation.

The increased costs were incurred by the County as a result of Chapters 1747 and 1274 and their implementing regulations, not as a result of the Short-Doyle negotiated net amount contract. The responsibilities **are** mandated by statute and exist regardless of and prior to the contract.

Moreover, in the negotiated net amount contract for the Fiscal Year 1986-87, the County did not contract to provide services mandated by Chapters 1747 and 1274. The only references to the program in the contract are on Exhibits B and F, which set forth the \$222,955 allocation to the County specifically for this program. Exhibit D, relates to children's services in general, not specifically to services required by Chapters 1747 and 1274.

In its assertion that the services are required by contractual obligation, the Department of Mental Health relies solely on the

following general language from the twenty page contract:

28. Program Principles

The State and County agree that the following represents the program principles of the local mental health program:

- a . A continuum of mental health services required by statute and which are accessible and acceptable to the county population.

No other language from the body of the contract can be construed as imposition through contract of the responsibilities imposed by Chapters 1747 and 1274. Even this language does not constitute contractual acceptance of those responsibilities. In context, it is clear that the "mental health services required by statute" are those required by the Short-Doyle Act, Welfare & Institutions Code Section 5600 et seq.

Furthermore, Welfare & Institutions Code section 5705.2, which authorizes negotiated net amount contracts, states:

- (a) It is the intent of the Legislature that the use of negotiated net amounts or rates, as provided in subdivision (b), be given in preference in contracts for services under this division. (Italics added; referring to Part 2 of Division 5 of Welfare & Institutions Code.)

Clearly, the negotiated net amount contract requires only Short-Doyle services. Chapters 1747 and 1274 are codified in Chapter 26 of Division 7 of Title 1 of the Government Code. This program is separate from the Short-Doyle program of Welfare & Institutions Code section 5600 et seq. Clearly, the provision of needed services pursuant to Chapters 1747 and 1274 is not within the scope of the negotiated net amount contract between the County and the State.

IV. Chapters 1747 and 1274 and implementins recrulations impose a "new program" on counties.

California has participated in the Education for All Handicapped Children Act program since 1980. Chapter 797, Statutes of 1980. It is true that the program is not new to California. However, prior to the passage of Chapter 1747, none of the responsibilities outlined in Chapters 1747 and 1274 were delegated by the state to counties. Rather, it was local educational agencies which had the responsibility for providing mental health assessments, treatment, and case management for handicapped children. Chapters 1747 and 1274, therefore, clearly impose a new program on counties.

In fact, there has been a recognition that county mental health agencies are, as a result of Chapters 1747 and 1274, providing mental health services which previously were provided through local educational agencies. Funds reported by local educational agencies as previously having been spent by them for mental health services were transferred from the State Department of Education to the State Department of Mental Health and then allocated to the counties. However, the amount of the allocation received by the Santa Clara County mental health agency grossly fails to compensate the County for the cost of the new services which it must provide.

Additionally, the number of referrals from local educational agencies has increased substantially now that the local educational agency is responsible only for the identification of handicapped students, and not for their mental health assessment and treatment. It appears that, prior to the passage of Chapter 1747, children in need of mental health services in order to take advantage of free, appropriate education were under-identified.

Prior to the passage of Chapter 1747, the County mental health agency did not conduct individualized education assessments, did not attend individualized education program team meetings, did not defend individualized education program mental health recommendations in mediations, administrative hearings or courts, did not provide case management for all seriously emotionally disturbed children receiving out-of-home placement, and did not provide all mental health treatment services required in specific individualized education programs for the handicapped students residing in the County. The County mental health agency did perform some mental health assessments for some handicapped children. These assessments, however, would not be geared specifically to the educational needs of the children. The treatment offered by the County was not necessarily that which was required by a child's individualized education program.

Clearly, the population of children receiving mental health services through county mental health agencies prior to the passage of Chapter 1747 overlaps with the population of children who were receiving mental health services pursuant to individualized education programs. The two populations, however, were not identical. Many handicapped children received assessments and/or treatment from private agencies or therapists. Many children receiving mental health services from county mental health agencies did not have individualized education program recommendations for mental health services or did not have individualized education programs at all. Even for children with individualized education program mental health recommendations, the services provided by county mental health agencies were not necessarily the services required by the individual programs.

The overlap in the two populations, was such that in Fiscal Year 1986-87, 215 of the 336 children receiving treatment pursuant to Chapters 1747 and 1274 had previously been known to the County mental health system. To some extent, some of the 215 identified children had been receiving mental health services from the County mental health agency. To some extent, the services provided both fulfilled the recommendations of individualized education programs and were required by the County's negotiated net amount contract with the State.

The County concedes that it has responsibility for providing some mental health services to children under the Short-Doyle Act and the negotiated net amount contract with the State, including some services which are, in addition, required by Chapters 1747 and 1274 in particular cases. It cannot be said, however, that the services received by the 215 children previously known to the County mental health agency were the responsibility of the County in the absence of Chapters 1747 and 1274.

The Short-Doyle Act does not set forth with precision the mental health services which counties must make available to their residents. Children do constitute a population for which counties are required to provide mental health services under Welfare & Institutions Code section 5651.1, but the statute is silent as to the levels and specific types of services to be provided. County has committed to children's services funds in excess of the requirements of Welfare & Institutions, Code section 5704.5.

In years prior to Fiscal Year 1986-87, the County of Santa Clara had substantial overmatch which, in large part, funded the services for children. Some services to the 215 children were not required by either statute or negotiated net amount contract, but were voluntary, funded by the County's voluntary overmatch. To the extent that the County no longer has the option of determining whether it will continue providing this voluntary service, Chapters 1747 and 1274 impose a new mandate regarding services to these children.

Prior to the passage of Chapter 1747, the County had flexibility in determining what mental health services would be provided to which children. The County has lost this flexibility with regard to handicapped children.

Prior to the passage of Chapter 1747, the County had the flexibility of deciding to overmatch or to fund mental health services at the minimum level. While it can still decide to fund at the minimum level, it cannot proportionately reduce services to handicapped children which are required by Chapters 1747 and 1274. As a result, if the County were to reduce its overmatch, other children's programs would bear an increased reduction in funding and the County

would be at risk of failing to meet its obligation to provide a continuum of mental health services to children.

The impact of the mandate of Chapters 1747 and 1274 on other children's programs in counties which do not overmatch is graphically illustrated by the supporting declaration filed by the County of Riverside. Children receiving services pursuant to Chapters 1747 and 1274 are receiving treatment in priority to other children in need of mental health services. Since Riverside does not overmatch, and the funds for children's services are limited, less services are available for other children.

In Riverside County, the list of children no longer able to have access to certain services is appalling. Children going without services include abused children, children with mental health needs who have failed multiple placement attempts, delinquent children who are ordered into treatment by the courts or who are on probation. Other children who are beginning to show signs of serious problems also are denied access to services. In effect, Riverside County can no longer fulfill its Short-Doyle obligation to children in general. The only reason this has not happened in the County of Santa Clara is that the County has contributed voluntary overmatch of approximately five million dollars.

v. Chapters 1747 and 1274 and implementing regulations impose a higher level of service on the counties.

Chapters 1747 and 1274 and their implementing regulations impose a higher level of service on the counties, as discussed in Section IV, above.

Also, counties have in large part lost their ability to charge for the services rendered. It may no longer charge parents for services rendered, nor may it require parents to submit insurance claims if payment of the claims would result in an increase in premiums or a decrease in annual or lifetime benefits. This is a substantial loss, as many of the handicapped children referred for assessment in Fiscal Year 1986-87 either are covered by insurance or have parents with ability to pay for the services. In fact, a large number of the new referrals are from the wealthier school districts in the County, involving children who otherwise would not be receiving services through the County either free or at no cost.

As discussed in the original claim and in Section IV. above, the County has lost a great deal of flexibility with the imposition of Chapters 1747 and 1274 responsibilities. The Department of Mental Health asserts that counties retains flexibility "as to who is served and what services are received" since counties are involved in the I.E.P. process and provide input to the I.E.P. team. To characterize this as flexibility is to misunderstand the program.

Counties are required to perform professional mental health assessments. If the professional determines that a child meets the criteria for receiving mental health services pursuant to the individualized educational program, the professional must recommend the treatment necessary for the child to benefit from a free, appropriate education. Counties must make appropriate recommendations and must provide the recommended mental health treatment. Counties cannot "decide" that a child meeting the criteria will not receive services. Similarly, counties cannot "decide" to offer less services or less frequent services than is required to meet the children's needs for free, appropriate education.

Moreover, it is not simply the recommendations of county mental health agencies which determine treatment. The federal and state statutory schemes contain certain due process procedures and rights, including mediation, administrative hearings, or judicial review. It may be a court or administrative law judge who determines what treatment is required. Although it has not yet occurred in Santa Clara County, it is possible that an administrative law judge or court may order that mental health services be provided by private therapists. Furthermore, the county mental health agency itself may, in certain cases, have to recommend private therapists. Chapters 1747 and 1274 impose an inflexible requirement to provide recommended services. There is no provision for the County to fail to do so simply because it and its contract agencies do not have the expertise necessary to provide such treatment.

The County concedes that, under Chapters 1747 and 1274 and their implementing regulations, county mental health agencies are responsible only for children with more severe mental or emotional conditions, and only after the local educational agencies have exhausted their resources. In fact, local educational agencies are to make referrals to county mental health agencies after they have exhausted their resources,

The County concedes that county mental health agencies may, to some extent and in some cases, rely on existing assessments performed for non-individualized education program purposes or performed by non-County professionals. Nevertheless, it remains the responsibility of the County mental health agency to ensure that an assessment is performed which meets the standards imposed by Chapters 1747 and 1274 and their implementing regulations. These issues should be addressed by the Commission when it establishes parameters and guidelines, after it has determined that a mandate is imposed.

- VI. The costs of complying with Chapters 1747 and 1274 and their implementing regulations are not reimbursed by general Short-Doyle funds. Alternatively, the costs of complying with said provisions are reimbursed by general Short-Doyle funds only to a limited extent.

The County concedes that it is required to commit a certain level of its general Short-Doyle allocation to mental health services for children. However, the County is required to provide a continuum of mental health services, from prompt evaluation and care of persons with acute disabling symptoms to community programs which enhance the ability of the general population to cope with stressful life situations. Welfare & Institutions Code section 5705.2(f). Obviously, the population of children eligible to receive this continuum of services is broader than the population of handicapped children needing mental health services in order to benefit from a free, appropriate education.

The County receives a specific allocation in its Short-Doyle negotiated net amount contract for the costs of Chapter 1747 and 1274. In Fiscal Year 1986-87, that allocation was \$222,955.

The State Department of Mental Health asserts that, in addition to the specific State allocation for this program, the County has been reimbursed for the costs of this program through general Short-Doyle funds. As discussed in Section II., above, the services required by Chapters 1747 and 1274 are not covered by the Short-Doyle negotiated net amount contract between the County and the State.

Except for the specific dollar allocation, no amount of Short-Doyle funds should be considered as reimbursement for the costs of this program. Under the negotiated net amount contract, the County agrees to provide a certain level of services in exchange for receiving State funding. The County assumes the risk that the cost of the services will exceed the net amount of funding, and the State assumes the risk that the services funding will exceed the costs of the services. If the County is able to provide the required services at a cost less than the amount of the contract, the County is entitled to keep any savings. The services required by Chapters 1747 and 1274 are not required by the Short-Doyle negotiated net amount contract. If the funding of the mandate imposed by Chapters 1747 and 1274 results in a Short-Doyle savings, the County is entitled under the contract to retain the savings.


In the alternative, if the Commission determines that general Short-Doyle funds may provide some reimbursement for the costs of complying with Chapters 1747 and 1274, only a portion of the general Short-Doyle funds can be considered as reimbursement for this program. Since the County is required to provide a broad continuum

Letter to Stephen R. Lehman
December 16, 1987
Page 12

of services, the only amount of the general Short-Doyle funds which can be considered as reimbursement is the amount of general State Short-Doyle children's services funds (90% of children's services funds less voluntary overmatch or, in the alternative, less a proportional share of the voluntary overmatch) which exceeds the amount required to provide the continuum of mental health services. For purposes of this calculation, the minimum level of "continuum of mental health services" which is required by the Short-Doyle Act, disregarding the additional requirements of Chapters 1747 and 1274, must be determined.

Respectfully submitted,

DONALD L. CLARK
County Counsel


Susan A. Chapman
Deputy County Counsel

cc: Board of Supervisors
Sally Reed, County Executive
Ken Meinhardt, M.D., Director Mental Health
Fred Archer, SB 90 Coordinator



Senate California Legislature

REPLY To:

☐ SACRAMENTO ADDRESS
STATE CAPITOL
SACRAMENTO, CA 95814
(916) 445.6747

☒ DISTRICT OFFICE
830 MENLO AVENUE
SUITE 200
MENLO PARK, CA 94025
(415) 321.1451
(408) 277.9824

STATE SENATOR
REBECCA Q. MORGAN
ELEVENTH DISTRICT

COMMITTEES:

CHAIR: SELECT COMMITTEE ON
INFANT AND CHILD CARE AND
DEVELOPMENT

VICE CHAIR EDUCATION

MEMBER: ENERGY AND PUBLIC
UTILITIES

REVENUE AND TAXATION

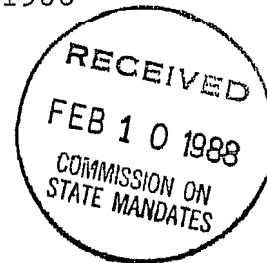
TRANSPORTATION

JOINT COMMITTEE ON
SCIENCE AND TECHNOLOGY

JOINT COMMITTEE FOR
REVIEW OF THE MASTER
PLAN FOR HIGHER EDUCATION

February 9, 1988

Mr. Stephen R. Lehman
Assistant Executive Director
Commission on State Mandates
1130 K Street, Suite LL50
Sacramento, CA 95814



RE: CSM-4282
Claim of the County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes
of 1985;
Title 2, CAC, Division 9
Mental Health Services to Handicapped and Disabled
Students

Dear Mr. Lehman:

I support the test claim of the County of Santa Clara for mental health services for handicapped and disabled students. Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of 1985 mandate a new--and expensive--program on counties. This legislature requires counties to provide some mental health services which previously were discretionary. To an extent, the legislation deprives counties of the ability to allocate mental health resources in accordance with clinical priorities.

A county must allocate its limited resources among its responsibilities. The State is required to fund mandated programs. Without adequate funding, the requirements of Chapters 1747 and 1274 jeopardize a county's ability to meet the needs of its residents, including mental health needs of children and adults. Consequently, I urge your favorable action for this claim.

Sincerely,

Rebecca Q. Morgan
REBECCA Q. MORGAN

RQM:zim

GERALD J. GEERLINGS
COUNTY COUNSEL

PRINCIPAL DEPUTIES

W. W. MILLER, CHIEF
PETER H. LYONS
EDWARD D. PALMER

OFFICE OF THE
COUNTY COUNSEL

RIVERSIDE COUNTY
3535 TENTH STREET, SUITE 300
RIVERSIDE, CALIFORNIA 92501-3674
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TIMOTHY J. DAVIS
ROBERT L. KLOTZ
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ROBERT M. PEPPER
DOROTHY L. HONN
JOE S. RANK
SUSAN JOHNSON BENTLEY
MICHELE D. LEVINE
KATHERINE A. LIND
JOAN A. BORGER
JAMES J. BRZYTTA
SHERRY G. GORDON
PAMELA J. ANDERSON
MARY MITCHELL

November 17, 1987



Stephen R. Lehman
Assistant Executive Director
State of California
Commission on State Mandates
1130 K Street, Suite 1150
Sacramento, CA 95814

Re: CSM-4282; Claim of County of Santa Clara
Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
Title 2, CAC, Division 9
Handicapped and Disabled Students

Dear Mr. Lehman,

The enclosed declaration of John J. Ryan, Director of the Riverside County Department of Mental Health, is being submitted to you in support of the claim of the County of Santa Clara in the above-referenced matter.

The County of Riverside is desirous of having this declaration considered by the commission in support of the claim of Santa Clara, and accordingly we are formally requesting that it be submitted for the commission's consideration.

If problems arise in this matter, please contact me at your convenience.

Thank you for your consideration in this matter,

Sincerely,

WILLIAM C. KATZENSTEIN
Deputy County Counsel

WCK: bas

cc: Susan A. Chapman, Deputy County Counsel, Santa Clara County
Andrea Hix, David M. Griffith and Associates

1 November 17, 1987

2 RE: CSM-4282, The supporting declaration of the County of
3 Riverside re;

4 Claim of County of Santa Clara
5 Chapter 1747, Statutes of 1984; Chapter 1274, Statutes of 1985;
6 Title 2, CAC, Division 9
Handicapped and Disabled Students

7 I, JOHN J. RYAN, Director of the Riverside County
8 Department of Mental Health, declare;

9 In fiscal year 1986/87 Riverside County Mental Health
10 served 448 handicapped children as mandated by AB 3632 and AB 882
11 (Chapter 1747, Statutes of 1984 and Chapter 1274, Statutes of
12 1985). Those services cost \$993,474 while the State provided an
13 allocation to the county of only \$179,370 for the services. Thus,
14 \$814,104 had to be expended out of the regular Short Doyle
15 allocation (90% State, 10% County) to serve those children. As of
16 June 30, 1987, 198 children who had been assessed as needing
17 services under this mandated program were, because of limited
18 resources, still waiting to receive ongoing treatment. This was
19 in addition to 195 handicapped children already receiving services.
20

21 Because of the mandate to serve these children they are
22 now receiving services before other children who have not been
23 referred under this program. The only exception is those in
24 crisis such as suicidal youth. Therefore, other children in need
25 have increasingly limited access to public mental health
26 services. As more and more AB 3632/882 referred children enter
27 the system, the costs under this mandate are increasing, and
28 available services to other children are decreasing. Projections

1 of costs for this program to the County of Riverside for fiscal
2 year 1987/88 are at least \$1.5 million, but may be as much as \$2.3
3 million as more and more children enter the system, In
4 comparison, the State has allocated \$513,165 to the County of
5 Riverside for this program for fiscal year 1987/88. The costs to
6 the county in excess of the above-mentioned \$513,165 will come out
7 of the county's regular Short Doyle allocation.

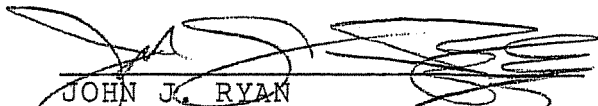
a The most intensive services such as day treatment
9 (minimum 3 hours a day, 2 - 4 days a week) are now accepting only
10 AB 3632/882 children. Thus, other children with serious emotional
11 problems such as abused children, children who are repeated
12 failures in adoptive placement, some psychotic children, multi
13 problem children, children ordered into treatment by the court,
14 and children on juvenile probation have the intensive day services
15 unavailable to them. They are also on waiting lists for very
16 limited outpatient resources. Once they do receive a mental
17 health evaluation they have a long wait for ongoing therapy in
18 some parts of the county. More treatment is now being provided in
19 groups with less and less resources available to provide
20 individual and family therapy. Children who are showing the
21 beginnings of serious problems, often younger children, are
22 virtually excluded from services. As resources focus on the one
23 population there is also less publicizing of the services and less
24 facilitating of referrals of needy children from the general
25 community, and from other agencies.

26 County Mental Health has found it necessary to focus
27 services on the AB 3632/882 population because of the State and
28 Federal mandates but even with that focus, has been unable to keep

up with the demand for service by that population much less by
other needy children.

I declare under penalty of perjury that the foregoing is
true and correct,

Executed at Riverside, California on 11/17/87.


JOHN J. RYAN
Director, Riverside County
Department of Mental Health

1101P

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA



In the Matter of the')	
)	
TEST CLAIM OF COUNTY OF SANTA CLARA)	NOTICE OF PREHEARING
HANDICAPPED AND DISABLED STUDENTS)	<u>CONFERENCE</u>
)	
)	(Government Code Section
)	11511.5)
)	
)	OAH No. N-30939
)	

YOU ARE HEREBY NOTIFIED that a Prehearing Conference has been ordered in this matter and will be held before the Administrative Law Judge of the Office of Administrative Hearings, Department of General Services, State of California, who is assigned to hear this matter at:

Office of Administrative Hearings
501 J Street - Suite 220
Sacramento, CA 95814

On Friday, April 8, 1988, at 9:00 a.m.

The Prehearing Conference, like a Pretrial Conference in a civil matter, is held to identify and define issues in dispute and expedite the hearing. Parties should be prepared to discuss, and the Administrative Law Judge may consider and rule on, any of the following matters applicable to this case:

- a. Clarification of factual and legal issues in dispute.
- b. Stipulations to factual matters and admission of exhibits, including waiving foundations and other objections regarding exhibits and testimony.
- c. Jurisdictional and due process matters including form and sufficiency of pleadings, motions to consolidate/sever, etc.
- d. Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.
- e. Resolution of remaining discovery problems, claims of privilege, motions to quash, protective orders and subpoenas, etc.

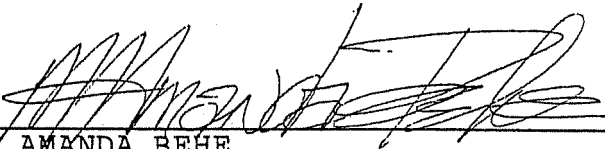
- f. Any other matters as shall promote the orderly and efficient conduct of the hearing.

The Administrative Law Judge may issue a Prehearing Order incorporating the rulings made and matters determined at the Prehearing Conference.

THE PARTIES ARE ORDERED to supply the following at the Prehearing Conference:

1. A written list of proposed witnesses, which further identifies proposed expert witnesses and a curriculum vitae, resume or statement of qualifications for such experts.
2. A written list of proposed exhibits and a copy of each proposed documentary or photographic exhibit to be premarked for identification. If copies of such items have not been provided to the opposing party in discovery, a complete additional set shall be furnished.

Dated: March 1, 1988


M. AMANDA BEHE
Administrative Law Judge
Office of Administrative Hearings

Memorandum

Commission on State Mandates
1130 K Street, Rm LL50
Sacramento, CA 95814

Date : **MAR 28 1989**

File No.: N-30939.

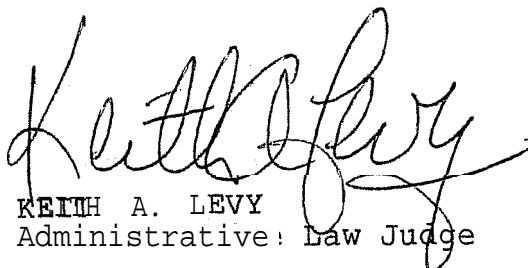
Telephone: ATSS ()
(485-4926
916 445-4926

From : Office of Administrative Hearings

Subject: COUNTY OF SANTA CLARA (Test Claim)

Enclosed is the following material pertaining to the above-captioned matter:

- (X) The original of the proposed decision
- () Two copies of the agency order of adoption--One copy to be returned to this office upon adoption of the Decision.
- () The original of the Decision
- (X) Exhibits numbered: 1-9 and A-E
- () Protest(s)
- ()


KEITH A. LEVY
Administrative Law Judge

KAL:jlb

Encl.

Transmittal Letter
OAH 60 (Rev. 10/86)
(O:MAR)

Memorandum

Commission on State Mandates

To : 1130 K Street, Rm LL50
Sacramento, CA 95814

Date : April 24, 1983
N-30939

File No.:

Telephone: ATSS ()
() 5-4926

From : Office of Administrative Hearings

COUNTY OF SANTA CLARA (Test Claim)

Subject:

Enclosed is the following material pertaining to
the above-captioned matter:

- (X) The original of the proposed decision
- () Two copies of the agency order of adoption--One
copy to be returned to this office upon adoption
of the Decision.
- () The original of the Decision
- () Exhibits numbered:

- () Protest(s)
- ()



Keith A. Levy sw
KEITH A. LEVY
Administrative Law Judge

KAL:sw

Encl.

Transmittal' Letter
OAH 60 (Rev. 10/86)
(O:MAR)

BEFORE THE
COMMISSION OF STATE MANDATE
STATE OF CALIFORNIA

OFFICE OF ADMIN. HEARINGS	
Compl.)	
Resp.)	Exh. <u>C</u>
ID <u>✓</u> FILED, <u>1988</u>	

In the Matter of the Test Claim
of

SANTA CLARA COUNTY

OAH NO. N-30939

ORDER

The prehearing conference was held on April 22, 1988 in Sacramento, California. The prehearing conference was presided over by Keith A. Levy, Administrative Law Judge, Office of Administrative Hearings. Appearing for the State of California was Harlan E. Van Wye, Deputy Attorney General. Appearing for the County of Santa Clara was Susan A. Chapman, Deputy County Counsel.

Pursuant to the stipulation of the parties, the following stipulation was entered:

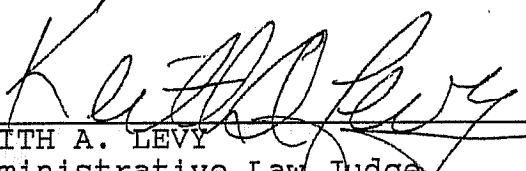
1. The moving party, with the burden of proof, is Santa Clara County.
2. The parties are to meet and agree to a stipulation of facts and resolve any legal issues that can be agreed upon commencing with an all-day meeting on May 6, 1988 at the Department of Finance in Sacramento, California at 9:00 a.m. The second meeting will also take place at the Department of Finance at 9:00 a.m. on May 12, 1988, in Sacramento, California.
3. The purpose of these meetings is to agree to factual matters and reduce the legal issues with the goal of eliminating the need for a formal hearing and disposing of the matter by the submittal of briefs. The parties will notify the Administrative Law Judge of their progress following the May 12th meeting.
4. A further prehearing conference date has been scheduled for May 20, 1988 at the Office of Administrative Hearings in Sacramento com-

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mencing at 9:00 a.m. The parties, after conferring with the Administrative Law Judge, will determine whether a conference call can be substituted for the prehearing conference scheduled for May 20th.

5. No hearing will take place on May 10 and 11 as previously scheduled and if the parties cannot agree to all the factual matters, formal hearing dates will be calendared for the purpose of taking testimony. A briefing schedule will be arranged giving the County of Santa Clara thirty (30) days to file their initial brief, the State of California thirty (30) days to respond and Santa Clara County will have additional twenty (20) days to file their closing brief at which time the matter will be submitted.

IT IS HEREBY ORDERED that the parties comply with the stipulations as entered above.

Dated: April 25, 1988



KEITH A. LEVY
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATION OF MAIL OR PERSONAL SERVICES

I, Janice L. Baker, declare as follows: I am over 18 years of age and have no interest in the above matter herein; my place of employment and business address is:

Office of Administrative Hearings
501 J Street, Suite 230
Sacramento, CA 95814

On April 25, 1988 a I served the attached entitled action,
☒ I mailed the attached entitled action,

Order - N-30939 (County of Santa Clara) Commission on State Mandate

☒ in the City of Sacramento, County of Sacramento, State of California.

BY:

☒ Regular mail in a sealed envelope, with postage thereon fully prepaid, in the United States mail.

☐ Certified mail in a sealed envelope, with postage thereon fully prepaid, in the United States mail.

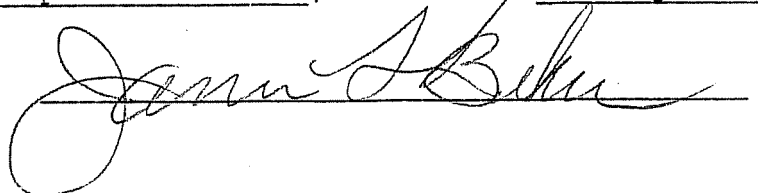
IN AN ENVELOPE addressed to each of the person(s) named below, at the address set out below each name:

Harlan E. Van Wye
Deputy Attorney General
Office of the Attorney General
350 McAllister St., #6000
San Francisco, CA 94102-3600

Susan A. Chapman
Deputy County Counsel
County of Santa Clara
9th Floor East Wing
70 West Hedding St.
San Jose, CA 95110

I certify and declare under penalty of perjury, that the foregoing is true and correct.

Executed on the 25th day of April, 1988 at 4:30 p.m. .



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TEST CLAIM OF COUNTY OF SANTA CLARA
HANDICAPPED AND DISABLED STUDENTS

[illegible]

0AH No N-30939

JOINT STATEMENT OF
FACTS AND POSITIONS

RECEIVED
NOV 30 1988
Office of Administrative Hearings
SACRAMENTO

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1 I. INTRODUCTION

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3 The parties to this action are the County of Santa Clara and
4 the California State Departments 'of Finance, Education, and Mental
5 Health. The County of Santa Clara filed a Test Claim with the
6 Commission on State Mandates under the provisions of Revenue and
7 Taxation Code section 2231 and Government Code Division 4 Part 7.
8 Santa Clara County alleges that Chapter 1747 of the Statutes of
g 1984 and Chapter 1274 of the Statutes of 1985 and their
10 implementing regulations, relating to the provision of certain
11 mental health services for handicapped and disabled students,
12 impose a mandate on the County as defined by the California
13 Constitution and Government Code section 17514(a). The County of
14 Santa Clara originally estimated that the cost of this mandate for
15 Fiscal Year 1986-87 was \$3,081,000, and now asserts that the cost
16 of this mandate is \$1,929,011.¹ The California State Departments
17 of Finance, Education, and Mental Health responded to the Claim.
18 The California Attorney General is representing the State'
19 Departments, who take a united position in opposition to the Test
20 Claim.

21 On January 28, 1988, the Commission on State Mandates
22 deferred action on this Test Claim, referring the Claim to an
23 administrative law judge for an advisory opinion. The Commission
24 asked that certain issues, which are set forth below, as well as
25 any others deemed appropriate by the administrative law judge, be
26 addressed. The positions of the State of California Departments of

27 ¹.Whenever the word "mandate" is used in this document with'
28 respect to the legislation that is the subject of this Test Claim,
it refers to the mandate alleged by the County.

1 Education, Finance, and Mental Health and the County of Santa Clara
2 on the issues presented by the Commission are as follows:

3 1. Whether Chapter 1747, Statutes of 1984; Chapter 1274,
4 Statutes of 1985 and Division 9, of Title 22 of the
5 California Administrative Code (now California Code of
6 Regulations) mandate counties to implement a new program or
7 higher level of service in an existing program within the
8 meaning of Government Code Section 17514 and Section 6 of
9 Article XIII. b of the California Constitution.

10 The claimant Santa Clara County asserts that the legislation
11 that is the subject of this Test Claim mandates a new program or
12 higher level of service in an existing program. The State asserts
13 that the legislation does not mandate a new program or higher level
14 of service.

15 2. Whether the statutes in question implement a federal
16 mandate, specifically, Section 504 of the Rehabilitation Act
17 of 1973, and Public Law 94-142.

18 The claimant Santa Clara County asserts that the legislation
19 that is the subject of this Test Claim does not implement a federal
20 mandate on counties. The State asserts that the legislation
21 implements a federal mandate, specifically Section 504 of the
22 Rehabilitation Act of 1973 and Public Law 94-142.

23 3. Whether the claimant incurred unreimbursed costs, from
24 state or federal funds, as a result of any activities
25 mandated by these statutes and regulations.

26 The issue as presented is ambiguous. Assuming that the
27 Commission asks whether the costs of implementing this program
28 exceeded payment for these services from state or federal funds,
the claimant County of Santa Clara and the State agree that the
costs of this program exceed the total of the specific allocation
from the state from this program, federal Medi-Cal payment for
services rendered through this program, and insurance payments
(voluntary and required). The State asserts that the funds

1 received by the claimant from the State under the claimant's
2 Short-Doyle contract reimburse the claimant for costs of any
3 activities mandated by these statutes and regulations. County of
4 Santa Clara asserts that the Short-Doyle funds are not
5 reimbursement for the costs of activities mandated by these
6 statutes and regulations.

7 4. If the statutes in question are found to require a new
8 program or higher level service, whether the affected local
9 entities have the authority to levy service charges, fees, or
10 assessments sufficient to pay for the mandated program or
11 increased level of service as discussed in Government Code
12 Section 17556(d).

13 The claimant County of Santa Clara and the State agree that
14 if the statutes in question are found to require a new program or
15 higher level of service, affected local entities do not have the
16 authority to levy service charges, fees, or assessments sufficient
17 to pay for the mandated program or increased level of service.
18 Both federal and state law provide that services that are the
19 subject of this Test Claim must be provided at no cost to parent or
20 child, and federal law prohibits affected local entities from
21 requiring that parents use insurance benefits to pay for the
22 services provided if using such benefits would result in a decrease
23 in coverage or an increase in the cost of coverage.

24 5. Whether any of the other provisions for denying a test
25 claim, as set forth in Government Code Section 17556, apply
26 to this claim.

27 Claimant County of Santa Clara and the State agree that no
28 other provisions for denying a test claim apply to this claim.

II. LAW GOVERNING STATE MANDATES

The requirement that the state reimburse local agencies for certain state mandated costs had its origin in the Property Tax Relief Act of 1972 (Chapter 1406 of the Statutes of 1972).² This act required the state to reimburse local agencies for the costs associated with new programs or increased levels of existing services mandated by the state. The specific requirements and procedures regarding reimbursement for state mandated costs applicable at the time of the enactment of the provisions of the legislation subject to this Test Claim are embodied in Revenue and Taxation Code sections 2201 et seq. Subject to certain exceptions, these provisions generally require that the state reimburse each local agency (including counties) for increased costs which a local agency incurs as a result of legislation or executive order which mandates a new program or mandates an increased level of service of an existing program. Revenue and Taxation Code sections 2207, 2231, and 2234.

On November 6, 1979, state reimbursement of programs mandated by the state on local agencies became a constitutional requirement when Article XIII B was added to the California Constitution by a successful initiative measure entitled "Government Spending Limitation." Section 6 of Article XIII B of the California Constitution provides:

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local

² The procedure for state reimbursement to local agencies for the costs of mandated programs is commonly referred to as the "SB 90" process, after the Senate designation for the bill signed into law and chaptered as Chapter 1406 of the Statutes of 1972.